newsletter on intellectual freedom

IFC ALA

Editor: Henry Reichman, California State University, East Bay
Founding Editor: Judith F. Krug (1940–2009)
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school book challenges increasingly organized efforts

Shortly after the fall semester began last year, Wesley Scroggins, a parent of three in Republic, Missouri, publicly criticized the local school district for carrying books that he described as soft-core pornography. "We've got to have educated kids, and we've got to be a moral people," Scroggins said then. "I've been concerned for some time what students in the schools are being taught."

Parents have long raised concerns about school and library books—children's and young adult books, and sometimes dictionaries—often for inappropriate content. The number of reported challenges in the past 30 years has hovered between about 400 or 500 each year, according to Deborah Caldwell-Stone, Associate Director of ALA's Office for Intellectual Freedom.

But while challenges once were mostly launched by a lone parent, Caldwell-Stone has noticed "an uptick in organized efforts" to remove books from public and school libraries. A number of challenges appear to draw from information provided on websites such as Parents Against Bad Books in Schools, or PABBIS.org, and Safelibraries.org.

And the latest wrinkle: A wave of complaints around the nation about inappropriate material in public schools has stirred emotional argument over just how much freedom should be extended to students in advanced courses.

Last year, a California parent objected to sex-related terms in a collegiate dictionary placed in a fourth- and fifth-grade classroom to accommodate advanced readers. And the American Library Association and other groups say they have seen a noticeable rise in complaints about literature used in honors or college-level courses.

"This is a relatively recent phenomenon, and it's spreading," says Joan Bertin, executive director of the National Coalition Against Censorship, a New York-based group.

More high schools are offering Advanced Placement or similar honors courses, in part to help students earn college credit and to give them a leg up in college admissions. Nearly 12,500 U.S. high schools offered Advanced Placement English literature this year, up 30% since 2000, and the number of students taking the national exam is up 86%.

This year, high schools in Hillsborough County, Florida; Easton, Pennsylvania, and Franklin Township, Indiana, were asked to review books being read in Advanced Placement English courses.

Judith John, an English professor at Missouri State University, suggests book bans might have become more noticeable these days because of an uncertain economy and concerns about terrorism. "When people are afraid, they become more conservative and reject

(continued on page 39)

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

in this issue

targets of the censor

READ BANNED BOOKS

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school book challenges …from page 37)

changes," she says.

Candi Cushman, education analyst for Focus on the Family, a Christian ministry in Colorado, claims it's "healthy and normal for parents to want to weigh in on what their kids are exposed to at taxpayer-funded schools, especially when we talk about materials that are sexually explicit."

Sex is not always the primary concern, however. A Seattle high school parent recently asked that Aldous Huxley's *Brave New World* be removed from a 10th-grade required reading list because of its depiction of American Indians as savages.

Cushman's group encourages concerned parents to start with school officials. "We trust the democratic process to weed out illegitimate complaints," Cushman says.

The American Library Association urges schools to keep challenged books on the shelves until a review committee can read the material and make a recommendation to key decision-makers.

Sometimes the decision is questioned:

- In Plano, Texas, in November, the school district collected a textbook, *Culture and Values: A Survey of the Humanities*, from classrooms after a parent voiced concern, then reissued the book after former students launched a social-media campaign to object. "This decision was made behind closed doors without discussion," said Ashley Meyers, 22, a 2006 graduate who had used the book.

- After the school board in Stockton, Missouri, voted in April to ban *The Absolutely True Diary of a Part-Time Indian*, English teachers who assign the book said they should have been consulted about its educational value. "We expected a more thorough, well-developed process before a book was banned," English teacher Kim Chism Jasper said during a public forum in September

- A chapter of Glenn Beck's 9.12 Project, a conservative watchdog network, was a force behind the removal of *Revolutionary Voices: A Multicultural Queer Youth Anthology* from the school library at Rancocas Valley Regional High School in Burlington County, N.J. The ACLU of New Jersey requested documentation from school officials regarding how the decision was made.

Such controversies make headlines, which helps ALA and other anti-censorship groups track book bans. But John, who has been studying book bans since 1993, suggests many library books simply disappear from circulation. "It's more prevalent than people think," she says. Reported in: *USA Today*, December 1,6. □

IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered by IFC Chair Julius Jefferson at the ALA Midwinter Meeting in San Diego, California, January 11.

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

INFORMATION

Newsletter on Intellectual Freedom

The *Newsletter on Intellectual Freedom* is a bimonthly publication of the Office for Intellectual Freedom (OIF). IFC has been engaged in discussing the future of this publication in light of declining revenues and budgetary constraints. The committee has examined the possibility of moving to an online-only model and has surveyed subscribers for their opinions about such a change. At this conference, IFC's discussions determined that moving to an online-only format with a print option will be the best alternative to keep the *Newsletter* financially viable. OIF staff will explore this option further and bring a report back to IFC at Annual Conference.

New *Library Technology Reports* Considers Privacy in the 21st-Century Library

OIF joined with ALA TechSource in a new effort this year that resulted in the publication of a special November/December issue of *Library Technology Reports: Privacy and Freedom of Information in 21st-Century Libraries*. OIF staff conceived and coordinated the contents of this issue, assembling a cast of writers to contribute articles on topics such as social networking, filtering, and radio-frequency identification (RFID) as they relate to intellectual freedom in libraries today. Librarians can buy this important new issue in print or electronically from the ALA Store and read the first chapter for free at the ALA TechSource website.

PROJECTS

Choose Privacy Week

OIF is very pleased to announce that it has been awarded a two-year grant in the amount of $105,650 from the Open Society Institute (the Soros Foundation) for privacy programming. OIF had previously received a 3-year, $350,000 grant from OSI that enabled the development of the first-ever Choose Privacy Week. With the new grant, OIF will be shifting its focus to topics of government surveillance; privacy and young people; and privacy in the cultural context of immigrant and refugee communities' use of libraries. The grant will help OIF gain even greater traction with Choose Privacy Week and develop this annual event into an institution similar

to Banned Books Week. The Open Society Institute has a strong interest in libraries' role of informing their communities about privacy, and they have been very pleased with OIF's work thus far. Visit www.privacyrevolution.org to learn more about Choose Privacy Week and the resources OIF has developed to help libraries engage their users in a conversation on privacy.

Banned Books Week

2010 marked the 29th year of Banned Books Week, which was held from September 25 through October 2.

The Read-Out! kicked off Banned Books Week 2010 in historic Bughouse Square in Chicago, Illinois, sponsored by OIF, the McCormick Civics Program, and the Newberry Library. Nearly two hundred people joined our host and critically acclaimed and censored young adult author, Chris Crutcher, in this fantastic event. Lauren Myracle, author of the book series most frequently challenged in 2009, *TTYL, TTFN, LT8GR,* shared her experience as a target of censors. Other speakers, including ALA President Roberta Stevens, FTRF President Kent Oliver, ALA Executive Director Keith Michael Fiels, and local Chicago celebrities, read from books featured on the top ten list of frequently challenged books of 2009.

In addition to the Read-Out!, we hosted Banned Books Week events in Second Life on ALA Island. Events included panel discussions on challenged books and trivia contests. For the first time ever, we hosted a machinima contest, filmmaking within a real-time, 3-D virtual environment where participants used the theme "Think for yourself and let others do the same" as the inspiration for their films.

Banned Books Week 2011 will begin on September 27 and continue through October 4. All BBW merchandise, including posters, bookmarks, t-shirts, and tote bags, are sold and marketed through ALA Graphics (www.alastore.ala.org/). More information on Banned Books Week can be found at www.ala.org/bbooks.

ACTION

WikiLeaks

The recent disclosures of thousands of U.S. diplomatic cables by WikiLeaks, and the U.S. government's response to those disclosures, have sparked a controversy that raises many complex issues for the American Library Association, libraries, and librarians. Among the serious and important issues that implicate ALA policy are the decision by the Library of Congress and other government agencies to temporarily block online access to the WikiLeaks website; First Amendment protections for whistleblowers, journalists, and the press; appropriate classification of government documents and public access to government information; free and open access to the Internet and online services; libraries' obligation to provide (or deny) access to the documents disclosed by WikiLeaks; and the functioning of an open government in a democracy.

To aid the conversation taking place among ALA members about WikiLeaks, OIF and the Office of Government Relations (OGR) jointly developed a website to inform members about the complex issues raised. The website, ALA Emerging Issues, can be accessed via the ALA main website or directly at www.emergingissues.ala.org.

In addition, OIF and OGR jointly sponsored a Midwinter program on issues raised by the WikiLeaks disclosures, which took place Saturday, January 8, with a discussion led by Patrice McDermott, Director of OpenTheGovernment.org and former Deputy Director of the Office of Government Relations at ALA.

Finally, at this conference, IFC has worked with the Committee on Legislation (COL) to review the issues associated with WikiLeaks' disclosures. After much discussion and in collaboration with the Committee on Legislation, the Intellectual Freedom Committee determined that the best response was to focus on the larger issues of classification, whistleblowing, and access to government information rather than limiting our concerns to one group. A joint working group crafted the following *Resolution on Access to and Classification of Government Information,* which we are pleased to jointly present with the Committee on Legislation, and move the adoption of Action Item #19.1.

In closing, the Intellectual Freedom Committee thanks the division and chapter intellectual freedom committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

Resolution on Access to and Classification of Government Information

WHEREAS, public access to information by and about the government is a basic tenet of a democratic society and crucial to the public's ability to hold the government accountable for its actions; and

WHEREAS, libraries are essential to the free flow of ideas and to ensuring the public's right to know; and

WHEREAS, a democratic society needs to balance the fundamental right to access government information with the necessity to withhold certain information essential to national security; and

WHEREAS, "the guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic," (Justice Hugo Black, *New York Times Co.* v. *United States*, 403 U.S. 713 (1971)); and

WHEREAS, current and former government officials estimate that 50% to 90% of classified information is either overclassified or should not have been classified at all,

making the administration of classified information ineffective and preventing the protection of real secrets (Statement of Thomas Blanton, Director, National Security Archive, George Washington University, to the Committee on the Judiciary, U.S. House of Representatives, Thursday, December 16, 2010); and

WHEREAS, President Barack Obama has pursued systemic reform and greater openness and transparency by ordering the declassification of hundreds of millions of records, prescribing a uniform system for classifying, safeguarding, and declassifying national security information, and directing government agencies to perform a Fundamental Classification Guidance Review "to identify classified information that no longer requires protection and can be declassified" (Executive Order 13526 on Classified National Security Information (Dec. 29, 2009)); and

WHEREAS, the American Library Association (ALA) has commended President Barack Obama for issuing, on his first day in office, the Memorandum on Transparency and Open Government; and

WHEREAS, the ALA continues to support whistleblowers in reporting abuse, fraud, and waste in government activities (ALA 2007-08 CD#20.5 and ALA 2003-2004 CD 20.7) and opposes the misuse of governmental power to intimidate, suppress, coerce, or compel speech (Policy 53.4, Policy on Governmental Intimidation;. Policy 53.6, Loyalty Oaths.); and

WHEREAS, WikiLeaks' ongoing disclosure of large numbers of classified and unclassified United States government documents has renewed debate about access to, and classification of government information; now, therefore, be it

RESOLVED, that the American Library Association (ALA):

1. Commends President Barack Obama for establishing the National Declassification Agency and issuing Executive Order 13526 on Classified National Security Information and supports and encourages expanded initiatives to reform the U.S. classification system;
2. Urges Congress to pass legislation that expands protections for whistleblowers in the Federal government, such as the Whistleblower Protection Enhancement Act of 2010;
3. Urges the U.S. President, Congress, the federal courts, and executive and legislative agencies to defend the inalienable right of the press and citizens to disseminate information to the public about national security issues and to refrain from initiatives that impair these rights;
4. Affirms the principle that government information made public within the boundaries of U.S. law should be available through libraries and the press without restriction.

Adopted by ALA Council, January 11, 2011. □

FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council delivered by FTRF President Kent Oliver at the ALA Midwinter Meeting in San Diego on January 11.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2010 Annual Conference:

FTRF and the Future

Over the past forty years, the Freedom to Read Foundation has marked many successes as the ALA's First Amendment legal defense arm, including the 1997 landmark Supreme Court decision that secured full First Amendment protection for materials published via the Internet. In 2009, the FTRF Board of Trustees celebrated those achievements while transitioning its leadership to a new Executive Director.

In 2010, the FTRF Board of Trustees resolved to examine the Foundation's past and envision its future in order to assure another successful forty years. To accomplish this, trustees met for a one-day retreat on October 5, facilitated by Dan Wiseman of Wiseman Consulting. Over the course of the day, our conversations ranged from a group analysis of FTRF's strengths, weaknesses, opportunities and threats, to an exercise designed to elicit our hopes and dreams for FTRF's future achievements. We identified priorities and strategies for fundraising, membership recruitment and engagement, litigation, education and public awareness, collaboration, and FTRF's governance and organizational capacity. The board continued the discussion at this meeting and we expect a full report to be available for the 2011 Annual Conference.

New Treasurer/Trustee

This fall, we celebrated with FTRF Treasurer Susan Hildreth when President Barack Obama nominated her to lead the Institute for Museum and Library Services. She was confirmed last month, at which time she tendered her resignation from the FTRF Board.

I am pleased to announce that at this meeting, the Trustees voted Chris Finan to fulfill her term on the board and elected current Trustee Robert P. Doyle to complete her term as Treasurer (both through the 2011 Annual Conference). Chris, a past FTRF Trustee, is the president of the American Booksellers Foundation for Free Expression (ABFFE) and one of the foremost figures of the free speech community. We are pleased to welcome him back to the fold!

Defending the Freedom to Read

During our retreat, the FTRF Board listed as our preeminent strength FTRF's long history of protecting

the right to read in our courts of law. I am particularly pleased to be able to report two new legal victories for the freedom to read since we last met in Washington, D.C.

Our first victory came on September 20 in the case of *Powell's Books* v. *Kroger*, a lawsuit challenging two new "harmful to minors" statutes passed by the Oregon legislature. FTRF and its co-plaintiffs, including seven Oregon bookstores, ABFFE, the Association of American Publishers (AAP), the Comic Book Legal Defense Fund, the Oregon ACLU, Planned Parenthood, the Cascades AIDS Project, and FTRF Board Member Candace Morgan, filed the lawsuit in part because the law relied on a non-standard legal definition of sexually explicit material that potentially swept up books, pamphlets, websites, and other materials that would otherwise be constitutionally protected for minors.

The Ninth Circuit confirmed FTRF's concerns when it ruled both laws unconstitutional on grounds of overbreadth. Stating that both statutes "sweep up a host of material entitled to constitutional protection, ranging from standard sexual education materials to novels for children and young adults by Judy Blume," the court held that Oregon's statutes criminalize the distribution of far more material than hardcore pornography or material that is obscene to minors, and that the statutes are not subject to a limiting construction that would make them constitutional.

A second lawsuit, filed against the State of Alaska, challenges a newly-adopted Alaska statute that criminalizes the distribution of certain material to minors under the age of 16 either on the Internet or in person, such as in a library or a bookstore. Under the new law, a crime is committed if the material distributed fits within the law's definition of "harmful to minors," and is distributed to a 16 year old or a person the distributor believes is under 16 years of age; it is not a defense to argue that the person was not actually younger than 16.

FTRF filed a lawsuit to challenge the Alaska statute, joined by the Alaska Library Association, several local booksellers, the ACLU of Alaska, and AAP and ABFFE. Remarkably, the district court granted our motion for a preliminary injunction on October 20 without requiring oral argument, holding that the statute chills free speech and that there is a strong likelihood that the plaintiffs will succeed in overturning the law when the case is tried before the court. On November 17 the court issued an order clarifying that the statute cannot be enforced during the pendency of the case.

Banned Books Week and Judith Krug Fund

The Judith Krug Fund, created from money donated to FTRF in memory of its founding Executive Director, funds projects and programs that embody Judith's lifelong devotion to educating librarians, library workers, and the public about the importance of intellectual freedom.

I am very pleased to report that the first grants made from the Judith Krug Fund underwrote Banned Books Week celebrations in seven different communities in 2010. The Iowa City Public Library won the largest grant, $2,500, for its Carol Spaziani Intellectual Freedom Festival, which took place during Banned Books Week. The festival included a "Rolling Read-Out" as part of the University of Iowa's Homecoming Parade. Other grantees included the ACLU of Pennsylvania; Canisius College of Buffalo, NY; the East Branch of the Dayton, Ohio Metro Library; the Santa Monica, California Public Library; the Takoma Park, Maryland Public Library; and St. Catharine College in Kentucky. Information about the 2011 Judith Krug Fund Banned Books Week grants will be available in the coming months.

In addition to the Banned Books Week grants, the Judith Krug Fund also plans to fund online intellectual freedom education opportunities for LIS students. FTRF staff attended last week's ALISE meeting and met several LIS educators who were excited to work in concert with FTRF in developing this program. If you or any of your colleagues are interested in participating in this effort, please contact FTRF Executive Director Barbara Jones at bjones@ala.org.

Developing Issues

Our Board spent a significant amount of time at this meeting discussing issues identified by our Developing Issues Committee as items of concern and that might inform future litigation. These include the recent WikiLeaks controversy, e-books and privacy, and issues raised by new laws regulating obscenity and recent obscenity prosecutions. The Board asked FTRF General Counsel Theresa Chmara to identify the issues associated with e-book privacy and libraries and report her findings back to the FTRF Board. In addition, Executive Director Barbara Jones discussed the issues raised by Common Sense Media's use of emoticons and other shortcuts to rate literature for youth.

Free Membership Offer for LIS Graduates

Based on the success of last year's offer of free memberships to recent LIS graduates, FTRF has renewed its offer of a year's free membership in the Foundation for 2010-2011 graduates of LIS programs. If you are faculty member, administrator, or student at an ALA-accredited library school or a school library media program recognized by AASL, please help us spread the word at your institution about this offer (as well as FTRF's special $10 membership rates for those who are still students).

I encourage you to join these new librarians by becoming a full personal member of the Freedom to Read Foundation. Membership in the Freedom to Read

Foundation supports the important work of defending our First Amendment freedoms, both in the library and in the larger world. Your support for intellectual freedom is amplified when you join with FTRF's members to advocate for free expression and the right to read freely. We also hope you will encourage your libraries and institutions to become organizational members of FTRF. Please send a check ($35 minimum dues for personal members, $100 for organizations) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at *www.ftrf.org/joinftrf.* □

2010 Downs Intellectual Freedom Award given to Comic Book Legal Defense Fund

For its dedication to the preservation of First Amendment rights for members of the comics community, the Comic Book Legal Defense Fund (CBLDF) has been selected to receive the 2010 Robert B. Downs Intellectual Freedom Award given by the faculty of the Graduate School of Library and Information Science at the University of Illinois at Urbana-Champaign.

It is often taken for granted that the expressive freedoms guaranteed by the First Amendment apply to all works of art and authorship, and that the protections accorded to texts, images, and musical compositions aren't limited to specific genres or expressive media. But a review of problems faced over the last two decades by creators of comic books, graphic novels, and games doesn't bear out this common-sense expectation.

The CBLDF is being honored for its consistent dedication to the active defense of First Amendment rights. Highlights of its recent work include:

In 1991, the CBLDF helped comic artist Paul Marvides successfully challenge a California State Board of Equalization decision to levy sales tax on comic strip art. At issue was whether comic book pages qualified as original manuscripts and therefore exempt from tax, or as mere commodities rather than creative works.

In 2000, CBLDF helped fund the defense of comic book artist Kieron Dwyer against a copyright and trademark infringement lawsuit brought by the Starbucks Corporation. Dwyer was forced to settle out of court on the trademark infringement, but the case established that satire is protected speech.

From 2004 to 2007, CBLDF supported the legal defense of Gordon Lee, a comic book shop owner in Georgia, who was prosecuted for distributing sexually explicit materials to minors (he gave away copies of an excerpt from *The Salon*, a graphic novel about Picasso and others in 1920's Paris). After two trials, a judge declared a mistrial.

In 2006, the CBLDF issued a letter supporting the retention of Alison Bechdel's *Fun Home* (a *Time* Magazine book of the year) and Craig Thompson's *Blankets*, which were the subjects of reconsideration by the Marshall (Missouri) Public Library after a patron complained they were pornographic.

In 2010, CBLDF joined with the American Booksellers Association and other groups to challenge a new Massachusetts law that holds website operators or anyone communicating through listservs criminally liable for any transmission deemed harmful to minors. Also in 2010, CBLDF joined with the Alaska Library Association and other groups to challenge a new Alaska law similar to the Massachusetts law described above.

CBLDF filed a brief in 2010 supporting the video game industry in the case of *Schwarzenegger* v. *EMA*, heard this fall before the U.S. Supreme Court: in this case, California seeks to ban the sale or rental of violent video games to minors.

The 2010 Downs Intellectual Freedom Award was presented to the CBLDF during the Midwinter Meeting of the American Library Association in San Diego, California, on January 8, 2011. ABC-CLIO, a publisher of reference, contemporary thought, and professional development resources, provided an honorarium for the recipient and co-sponsored the reception.

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

monitoring America

Nine years after the terrorist attacks of 2001, the United States is assembling a vast domestic intelligence apparatus to collect information about Americans, using the FBI, local police, state homeland security offices and military criminal investigators, the *Washington Post* reported in a major article by Dana Priest and William Arkin December 20.

The system, by far the largest and most technologically sophisticated in the nation's history, collects, stores and analyzes information about thousands of U.S. citizens and residents, many of whom have not been accused of any wrongdoing.

The government's goal is to have every state and local law enforcement agency in the country feed information to Washington to buttress the work of the FBI, which is in charge of terrorism investigations in the United States.

Other democracies—Britain and Israel, to name two—are well acquainted with such domestic security measures. But for the United States, the sum of these new activities represents a new level of governmental scrutiny.

This localized intelligence apparatus is part of a larger Top Secret America created since the attacks. In July, *The Washington Post* described an alternative geography of the United States, one that has grown so large, unwieldy and secretive that no one knows how much money it costs, how many people it employs or how many programs exist within it.

This story examines how Top Secret America plays out at the local level. It describes a web of 3,984 federal, state and local organizations, each with its own counterterrorism responsibilities and jurisdictions. At least 934 of these organizations have been created since the 2001 attacks or became involved in counterterrorism for the first time after 9/11.

The months-long investigation, based on nearly 100 interviews and 1,000 documents, found that:

- Technologies and techniques honed for use on the battlefields of Iraq and Afghanistan have migrated into the hands of law enforcement agencies in America.
- The FBI is building a database with the names and certain personal information, such as employment history, of thousands of U.S. citizens and residents whom a local police officer or a fellow citizen believed to be acting suspiciously. It is accessible to an increasing number of local law enforcement and military criminal investigators, increasing concerns that it could somehow end up in the public domain.
- Seeking to learn more about Islam and terrorism, some law enforcement agencies have hired as trainers self-described experts whose extremist views on Islam and terrorism are considered inaccurate and counterproductive by the FBI and U.S. intelligence agencies.
- The Department of Homeland Security sends its state and local partners intelligence reports with little meaningful guidance, and state reports have sometimes inappropriately reported on lawful meetings.

In cities across Tennessee and across the nation local agencies are using sophisticated equipment and techniques to keep an eye out for terrorist threats—and to watch Americans in the process. The need to identify U.S.-born or naturalized citizens who are planning violent attacks is more urgent than ever, U.S. intelligence officials say. December's FBI sting operation involving a Baltimore construction worker who allegedly planned to bomb a Maryland military recruiting station is the latest example. It followed a similar arrest of a Somali-born naturalized U.S. citizen allegedly seeking to detonate a bomb near a Christmas tree lighting ceremony in Portland, Oregon. There were nearly two dozen other cases just last year.

"The old view that 'if we fight the terrorists abroad, we won't have to fight them here' is just that—the old view," Homeland Security Secretary Janet Napolitano told police and firefighters recently.

The Obama administration heralds this local approach as a much-needed evolution in the way the country confronts terrorism.

However, just as at the federal level, the effectiveness of these programs, as well as their cost, is difficult to determine. The Department of Homeland Security, for example, does not know how much money it spends each year on what are known as state fusion centers, which bring together and analyze information from various agencies within a state.

The total cost of the localized system is also hard to gauge. The DHS has given $31 billion in grants since 2003 to state and local governments for homeland security and to improve their ability to find and protect against terrorists, including $3.8 billion in 2010. At least four other federal departments also contribute to local efforts. But the bulk of the spending every year comes from state and local budgets that are too disparately recorded to aggregate into an overall total.

The *Post* findings paint a picture of a country at a crossroads, where long-standing privacy principles are under challenge by these new efforts to keep the nation safe.

The public face of this pivotal effort is Napolitano, the former governor of Arizona, which years ago built one of the strongest state intelligence organizations outside of New York to try to stop illegal immigration and drug importation.

Napolitano has taken her "See Something, Say Something" campaign far beyond the traffic signs that ask drivers coming into the nation's capital for "Terror Tips" and to "Report Suspicious Activity." She recently enlisted the help of Wal-Mart, Amtrak, major sports leagues, hotel chains and metro riders. In her speeches, she compares the undertaking to the Cold War fight against Communists.

(continued on page 73)

a "sanitized" Huck Finn?

Mark Twain's *The Adventures of Huckleberry Finn* is a classic by almost any measure—T.S. Eliot called it a masterpiece, and Ernest Hemingway pronounced it the source of "all modern American literature." Yet, for decades, it has been disappearing from grade school curricula across the country, relegated to optional reading lists, or banned outright, appearing again and again on lists of the nation's most challenged books, and all for its repeated use of a single, singularly offensive word: "nigger."

Twain himself defined a "classic" as "a book which people praise and don't read." Rather than see Twain's most important work succumb to that fate, Twain scholar Alan Gribben and NewSouth Books plan to release a version of *Huckleberry Finn*, in a single volume with *The Adventures of Tom Sawyer*, that does away with the "n" word (as well as the "in" word, "Injun") by replacing it with the word "slave."

"This is not an effort to render Tom Sawyer and Huckleberry Finn colorblind," said Gribben, speaking from his office at Auburn University at Montgomery, where he's spent most of the past twenty years heading the English department. "Race matters in these books. It's a matter of how you express that in the 21st century."

The idea of a more politically correct Finn came to the 69-year-old English professor over years of teaching and outreach, during which he habitually replaced the word with "slave" when reading aloud. Gribben grew up without ever hearing the "n" word ("My mother said it's only useful to identify [those who use it as] the wrong kind of people") and became increasingly aware of its jarring effect as he moved South and started a family. "My daughter went to a magnet school and one of her best friends was an African-American girl. She loathed the book, could barely read it."

Including the table of contents, the slur appears 219 times in *Finn*. What finally convinced Gribben to turn his back on grad school training and academic tradition, in which allegiance to the author's intent is sacrosanct, was his involvement with the National Endowment for the Arts' Big Read Alabama.

Tom Sawyer was selected for 2009's Big Read Alabama, and the NEA tapped NewSouth, in Montgomery, to produce an edition for the project. NewSouth contracted Gribben to write the introduction, which led him to reading and speaking engagements at libraries across the state. Each reading brought groups of 80 to 100 people "eager to read, eager to talk," but "a different kind of audience than a professor usually encounters; what we always called 'the general reader.'

"After a number of talks, I was sought out by local teachers, and to a person they said we would love to teach this novel, and *Huckleberry Finn*, but we feel we can't do it anymore. In the new classroom, it's really not acceptable." Gribben became determined to offer an alternative for grade school classrooms and "general readers" that would allow them to appreciate and enjoy all the book has to offer. "For a single word to form a barrier, it seems such an unnecessary state of affairs," he said.

Gribben has no illusions about the new edition's potential for controversy. "I'm hoping that people will welcome this new option, but I suspect that textual purists will be horrified," he said. "Already, one professor told me that he is very disappointed that I was involved in this." Indeed, Twain scholar Thomas Wortham, at UCLA, compared Gribben to Thomas Bowdler (who published expurgated versions of Shakespeare for family reading), saying that "a book like Professor Gribben has imagined doesn't challenge children [and their teachers] to ask, 'Why would a child like Huck use such reprehensible language?' "Of course, others have been much more enthusiastic—including the cofounders of NewSouth, publisher Suzanne La Rosa and editor-in-chief Randall Williams. In addition to the mutual success of their Tom Sawyer collaboration, Gribben thought NewSouth's reputation for publishing challenging books on Southern culture made them the ideal—perhaps the only—house he could approach with his radical idea.

"What he suggested," said La Rosa, "was that there was a market for a book in which the n-word was switched out for something less hurtful, less controversial. We recognized that some people would say that this was censorship of a kind, but our feeling is that there are plenty of other books out there—all of them, in fact—that faithfully replicate the text, and that this was simply an option for those who were increasingly uncomfortable, as he put it, insisting students read a text which was so incredibly hurtful."

La Rosa and Williams committed to a short turnaround, looking to get the finished product on shelves by February. Mark Twain's *Adventures of Tom Sawyer and Huckleberry Finn: The NewSouth Edition* will be a $24.95 hardcover, with a 7,500 first printing. In the meantime, Gribben has gone back to the original holographs to craft his edition, which is also unusual in combining the two "boy books," as he calls them, into a single volume.

But the heart of the matter is opening up the novels to a much broader, younger, and less experienced reading audience: "Dr. Gribben recognizes that he's putting his reputation at stake as a Twain scholar," said La Rosa. "But he's so compassionate, and so believes in the value of teaching Twain, that he's committed to this major departure. I almost don't want to acknowledge this, but it feels like he's saving the books. His willingness to take this chance—I was very touched."

The response to Gribben's project among free speech advocates and opponents of censorship was, at the least, skeptical. Barbara Jones, Director of ALA's Office for Intellectual Freedom wrote the following column for AOL News.

"As the news flows to the American Library Association's Office for Intellectual Freedom about yet another bowdlerization of Mark Twain's *Adventures of Huckleberry Finn*,

my heart breaks. Pre-emptive censorship harms us on many levels, but the worst damage is done to young readers who are denied access to the richness of classic literature.

"Our office is all too familiar with *Huck Finn* censorship and 'adaptations.' The book was banned from some library shelves beginning with its first publication in 1885. Then it was for 'vulgarity'; now it is more likely to be targeted because of the 'N-word.' The Philadelphia Public Schools introduced a sanitized version in 1963. *Huck Finn* holds spot No. 14 on our list of the 100 most challenged books from 2000 to 2009.

"Our official response to the press is that yes, ALA opposes the expurgation of library materials, and we have a written policy, which states: 'The act of expurgation denies access to the complete work and the entire spectrum of ideas that the work is intended to express. Expurgation based on the premise that certain portions of a work may be harmful to minors is equally a violation of the *Library Bill of Rights*.'

"But there are even larger problems when the censored book holds such a well-deserved spot as a classic novel.

"*Adventures of Huckleberry Finn* was written by one of the most prolific and insightful writers and observers of the 19th and 20th century American scene. Mark Twain was not afraid to highlight all of his country's strengths and foibles. He used the N-word deliberately—and not because he was a racist.

"We know he wasn't if we read the book thoughtfully and if we understand his personal abhorrence of racism. He gave scholarship funds to support one of Yale's first African-American law school students for that very reason. I recall my many visits to the Mark Twain Home and Museum in Hartford, Connecticut, where he wrote *Huck Finn*. His Nook Farm neighborhood was home to many social progressives of the time, including Harriet Beecher Stowe.

"Children deserve to know this and they deserve to understand why Twain used the N-word. As he states in an explanatory note to *Huck Finn* (the book is written in the Missouri rural dialect of the time): 'The shadings have not been done in a haphazard fashion, or by guess-work; but painstakingly, and with the trustworthy guidance and support of personal familiarity with these several forms of speech.'

"If one reads the book carefully, in all its humor and irony, it becomes clear that Twain is attacking the failures of Reconstruction and showing the dark aftermath of slavery and the Civil War. And children too can understand this if they are introduced to the book by supportive teachers, librarians and parents.

"In my view, this latest effort to censor *Huck Finn* only underscores a lack of confidence in Americans' ability to think for ourselves and to grapple with difficult and painful issues. In our well-meaning efforts to protect children from an increasingly chaotic world, we are stifling their ability to confront uncomfortable issues and to work them out in a safe, supportive environment of the home, school or library. We are indeed missing a teachable moment.

"But, you argue, isn't this expurgation going to make it possible for more young people to read the book? I say: If they read the expurgation, they are not reading *Huck Finn*. If this book were not out of copyright, the author would not allow this kind of basic change to his words. This expurgation is taking away one of the most important aspects of this classic—the ability of a child to ask: 'Why is this book using a word I am not allowed to use?'

"*Huck Finn* does not create racist children, nor does it create low self-esteem. On the contrary, it offers an opportunity for readers to encounter a time in the United States when people were struggling for a new society that could overcome the hardships of slavery and make room for all people of all ethnicities.

"What a sadness that children are now going to read a sanitized version of a book that doesn't deserve to have the same title as its original." Reported in: *Publishers Weekly*, January 3; aolnews.com, January 5. □

the issues at stake behind WikiLeaks

By Shaked Spier, LIS Student at the University of Berlin and member of the IFLA Knowledge Management Section. The following article is reprinted from the February 2011 issue of FAIFE News, *newsletter of the International Federation of Library Associations' Committee on Free of Access to Information and Freedom of Expression.*

The developments in the WikiLeaks case since the "Cablegate"-leak in November 2010 have opened a new, unusual and very complicated debate regarding freedom of expression. There are different and complicated issues addressed in this debate, which raise major concerns not only in terms of freedom of expression, but also in terms of other information-ethical aspects such as government transparency and democracy, intermediary censorship and the abuse of state-library relations in order to enforce censorship.

In many discussions, one would hear about the danger to freedom of expression, especially regarding the intermediary censorship and tactics of financial suffocation targeted at WikiLeaks. But there is an important distinction to make—WikiLeaks doesn't operate in the name of freedom of expression. It is more that freedom of expression gives a certain amount of legitimacy to WikiLeaks' work. WikiLeaks has a clear stated position saying that

(continued on page 78)

censorship dateline

libraries

Enfield, Connecticut

Under pressure from the town council to either reschedule or reformat the nature of the screening, the Enfield Public Library decided to cancel its January 21 showing of Michael Moore's 2007 film *Sicko*, which is critical of the U.S. health care industry.

The decision to cancel the showing, which stemmed from a complaint by four residents, all members of the Republican Town Committee, was criticized by the Connecticut Library Association, which called the decision "an insult to our form of government" and said that the library should be a "battleground for ideas."

According to emails obtained by local media, the controversy began when Mayor Scott R. Kaupin asked why the Enfield Public Library was "getting in the middle of the debate" over *Sicko* a day before residents publicly asked the Town Council to cancel the library's screening of the film. The movie was to be screened as part of a three-month film series that would focus on health care, the environment and education.

Kaupin said that seven of the eight council members present at the January 18 meeting took issue with the film's description as non-fiction and the fact it would be screened without some type of balanced discussion to accompany it.

"To show an offensive film of any sort at a public library to me, it's embarrassing," Ken Nelson, Enfield's deputy mayor, told the council meeting. "Put something up that everybody is going to enjoy and nobody is going to complain. They might be bored … but that is the easy solution here. That should be our standard as far as I'm concerned in this town."

"It's not necessarily a non-fiction movie," Kaupin said. "The point of the council was, if the library is going to go into the realm of politics, they need to be balanced. Our preference is that they don't go there." Kaupin threatened at the meeting to cut the library's funding if it showed the film.

In the end, Kaupin said, the decision was made to pull the film from the series for now, but he said that library officials did not act under orders from the council. He said Town Manager Matt Coppler and Library Director Henry Dutcher were charged with deciding an appropriate course of action.

Connecticut Library Association President Debbie Herman said her organization was notified of the decision to pull the movie and was working to publicize the situation. In a press release, the library association applauded the Enfield Public Library for attempting to address health care issues, and asked that the town allow the library to reschedule the movie.

"No one is forced to read a book or see a movie at the library. The residents of Enfield are responsible enough to make choices for themselves and their children," the release states. "If politicians in Connecticut cities and towns felt free to remove or cancel showings of materials that they didn't like or were controversial, the basic freedom of speech rights of town residents would be denied."

Herman said that while it is still early, the library association is already in talks with the American Civil Liberties Union. "We've had discussions with ACLU Connecticut concering a wide range of things including possible legal action," she said. "I don't know if that's the direction it will go, but as defenders of intellectual freedom, we are very concerned about this."

"That is blatant political censorship," said Peter Chase, chairman of the Connecticut Library Association's intellectual freedom committee. "This is a real turning point for censorship when political officials feel they can remove things from public libraries or ban them because they disagree with their political philosophies."

"For them to say, 'Oh, we don't want to see the library providing any controversy,' … that's like saying we don't think Enfield is ready to have a public library," said Chase, director of the Plainville Public Library. "This is one of the core beliefs of our profession."

In the wake of the cancellation, Enfield Town Manager Matthew W. Coppler announced that future installments of the Enfield Public Library's series of non-fiction films about controversial issues would be postponed until the library director creates a plan to ensure that each screening offers multiple sides of each issue. Coppler also ordered Library Director Henry Dutcher not to speak to the media. Reported in: *Hartford Courant*, January 20, 25; *Journal Inquirer*, January 23, 28.

Brooksville, Florida

The book had everything a boy could ask for in an adventure story—gun and knife fights, secret organizations of villains and a young hero trying to save the world. But Christy Jordan thought the 400-page novel, called *Snakehead*, by Anthony Horowitz, was a bit much for her 9-year-old son, who brought the book home from the Westside Elementary School library.

After reading the back of the book, part of the "Alex Rider" series focusing on a teenage spy, she said drug and weapons smuggling and gang violence is too much for any child to have access to at that age.

"I find it hard to believe that there's a book like that in an elementary school—much less allow third-graders to rent the book," Jordan said. "I thought we were trying to keep them away from all the violence and keep their innocence for as long as we can. It's bad enough that us parents have to battle to keep them away from this stuff on TV, but now we have to battle with the school library?"

After finding the novel in her son's book bag last fall, Jordan twice filled out a form requesting that the book be removed. Both times a review committee denied those requests.

According to meeting notes, members noted that the book likely merits a PG-13 rating, has some "mature" content and, at the public library, is in the young adult section for ages 12 and older. However, members also agreed that, although the book is not appropriate for children reading at a third-grade level, it is appropriate for children reading at a fifth-grade level.

Some pointed out that kidsreads.com recommends the book for all children between 8 and 12 years old, while the *School Library Journal* review on barnesandnoble.com recommends the book for fifth through 10th grades. Another unnamed member pointed out that books like *Snakehead* are needed to draw in avid readers among with those who otherwise don't like to read.

"The parent, not the school, is responsible for censoring the books their child checks it out from the media center," according to the meeting minutes.

Superintendent Bryan Blavatt, who approved of the committee members' unanimous decision, said the matter now is slated to go before school board members, who will consider whether the book should stay or go. He said that although the review committee didn't side with Jordan, it proves the process works, and that she, as a parent, should be commended for bringing the matter to district officials.

"The thing you have to remember is this is a book in a library, not something that was assigned to the student," Blavatt said. "But to her (Jordan) credit, she did what she was supposed to do when a parent doesn't feel that a matter is appropriate. Now we get to see how the process works and, although the committee didn't rule in her favor before, it's in the board's hands now and if the board feels differently, then that's fine."

Meanwhile, Jordan said whether the book is taken off the shelves, she hopes that school officials will at least take a more cautious approach to what books youngsters are attempting to check out from school libraries.

"At the very least, if they're not going to take it off the shelves, I would at least like to see the librarians better check these books to see if they are appropriate," Jordan said, "and keep a better eye on what kinds of books kids are trying to check out." Reported in: *Tampa Tribune*, January 6.

York, Pennsylvania

A parent in the Central York School District asked the school board January 16 to remove a book from the elementary school library because she thinks it is too violent.

Megan Ketterman said the book *Stolen Children*, by Peg Kehret, should be removed from the Sinking Springs Elementary library because of violence in it. But the book's author says her books have a recurring theme—that violence is never the answer.

The book centers on the kidnapping of 13-year-old Amy and her 3-year-old babysitting charge. The kidnappers videotape the pair and send the DVDs to their parents for ransom. Amy works to send clues through the videos to help police find them.

Ketterman said her daughter Elisabeth, then 10, brought the book home from the library at Sinking Springs Elementary last year and "it completely floored me." She told her daughter she was not permitted to read the book and sent it back to school. She talked to school officials, who had her fill out a form describing what she thought was inappropriate.

Ketterman said she objects to the child being kidnapped at gunpoint and a kidnapper holding a knife to the child's neck, threatening her life if Amy does not cooperate. "Common sense should tell us this book is not appropriate," she said. "They said it's won many awards. I don't care ... it deals with gun violence, kidnapping of children."

Central spokeswoman Julie Randall Romig said in an e-mail it was premature to comment before the school board heard the issue. She said the procedure for challenges to materials had been followed through several steps—including a written objection, a meeting with the parent and several school officials and a special review committee. The final step, according to the policy, is an appeal to the school board.

Peg Kehret, of Washington, the 75-year-old author of the book, said her book is for children ages 9 to 13. Her books have two recurring themes, she said: be kind to animals, and "violence is never a solution to a problem." The characters use their wits to get out of trouble.

"The scenes this parent objects to are scary—but the violence never happens. Amy outsmarts the bad guys, so that the weapons don't hurt anyone," Kehret said.

It's more than a year since her daughter had the book, but it's too important to let go, Kehret said. She doesn't

want her younger children, who will eventually attend the school, to be exposed to the violence in that book, she said. She at least wants the book out of the elementary level. Reported in: *York Daily Record*, January 15.

schools

Lincolnshire, Illinois

Concerned about books his children are reading at Stevenson High School, a parent implored the school board December 16 to protect what he called the "traditional values" of the community. Vernon Hills resident John Dreyer, who said he has two sons attending the Lincolnshire school, specifically attacked *The Flamingo Rising*, a novel that's on a summer reading list.

A sexual encounter depicted in the novel was definitely something you could consider "X-rated," he said. He called the book offensive.

Dreyer also objected to "The Casual Carpool," a short story that his youngest son was assigned in class. He was critical of a lesbian character's desire to find a sperm donor so she could have a baby.

"The values that I've held dear my whole life are being redefined," Dreyer said. "I don't believe for a minute that the majority of the parents in this community think this is OK."

Several other adults in the audience at the board meeting, some parents of Stevenson students, sided with Dreyer. "Would you take those three pages (with the sex scene from) *The Flamingo Rising* and read them to your mother?" Vernon Hills resident Doug Loretto said. "Would she be proud of you?"

Another parent, Steve Long, said parents should be more involved when it comes to setting reading lists. Long also requested more parental notification about reading materials and suggested teachers provide short synopses of books.

Only one audience member, Bruce Slivnick, defended the literature being questioned. "My children all read *Flamingo Rising* and they found it a very thought-provoking piece of literature," Slivnick said. "The opening of ideas … is the way to have our children learn." Reported in: *Daily Herald*, December 16.

Rockport, Massachusetts

Rockport school officials have refused a literacy group's request to hand out free copies of a best-selling children's book to first-graders because it ends with a mouse calling a donkey a jackass.

School officials December 7 that they planned to send a letter home to parents asking whether they want their children to receive a copy of *It's A Book*, by Lane Smith. Rockport Superintendent Susan King said she liked the book's message but felt the language is inappropriate. "It's not something that we're going to send home as a school community to parents," King told the newspaper.

In the book, a mouse calls a donkey a "jackass" after the donkey can't figure out how to use a book and tries to use it as an electronic device. The book is about the importance of books in an increasingly technological world.

Pat Earle, founder of the locally based First R literacy program, said one word does not negate the message of the book, and the word "jackass" is an outdated insult most first-graders would not understand.

"We came to the unanimous agreement that this one word would neither negate nor even cloud the overall and very clear message of the story," Earle told school officials. "We believed that the word in another context (a rather out-of-date minor insult) would not be understood as such by 6-year-olds." Reported in: *Boston Globe*, December 8.

Bedford, New Hampshire

Bedford School Board members voted to approve an alternative curriculum for the high school's personal finance class January 11, and the much-debated book *Nickel and Dimed: On (Not) Getting By in America*, by Barbra Ehrenreich, was not part of it. The book has not been placed in any other course curriculum, but it can still be checked out of the library or used in other classes.

Nickel and Dimed is a nonfiction account about Ehrenreich's struggles to make a living on multiple minimum-wage jobs in America. It came under fire in Bedford after two parents, Dennis and Aimee Taylor, made a complaint to the School District about the book's profanity and offensive references to Christianity, although many of their comments suggested that their objections to the book were also, perhaps mainly, political.

The Taylors' complaint led the curriculum committee to re-evaluate the personal finance course, a required class for graduation. The committee presented its final decision to the School Board January 11. The board voted unanimously to accept the new curriculum, but School Board Vice Chairwoman Cindy Chagnon said the choice to remove Ehrenreich's book had little to do with the Taylors' objections.

"Their claims caused us to re-evaluate the course, and we decided (the book) is not applicable to personal finance," she said. "We're not by any stretch banning the book from the school."

The curriculum committee found alternatives, as Dean of Humanities Diane Babb recommended other articles and essays that could be used in place of the book to show students what it's like to live on a minimum-wage income.

"We were spending too much on the book and taking time away from other important aspects of the course," Chagnon said. "I think it's important to understand what it's like to live on minimum wage, but we found there are other ways that would be adequate to get that message across."

Chagnon said she doesn't expect to hear from the Taylors again because the book has been pulled from the course. "I think he's happy now," she said of Dennis Taylor. "I don't think (the Taylors) will file a formal appeal to the School Board because the book is no longer in the course."

The Taylors first complained about the book in Fall 2009, citing its occasional use of obscene dialogue and anti-capitalist message. "The author is a known social Marxist, hates everything American, everything that America stands for or was built on," Aimee Taylor said. "I mean when you read the book you see that strongly in this woman's agenda. It's horrible."

The Taylors also took issue with the book's portrayal of Christians. In one scene, Ehrenreich attends a tent revival meeting, and is troubled by its emphasis on Jesus Christ's crucifixion, rather than his social teachings.

"Jesus makes his appearance here only as a corpse; the living man, the wine-guzzling vagrant and precocious socialist, is never once mentioned, nor anything he ever had to say," Ehrenreich writes.

"I believe the school, by purchasing this book, by looking at it, is either intentionally agreeing with (Barbara) Ehrenreich by taking the position that Jesus was a drunken bum or that they're careless with their students," Dennis Taylor said.

Dennis Taylor also suggested the administration establish committees that would rate books in a similar way that movies are rated, with PG-13 and R-rated books only given to students who want them.

"The administration that are taking care of our children clearly, in this case, lack common sense, common decency and, in some cases of the civil rights, common law," he said.

In response to the Taylors' complaint, school district officials convened a materials review committee of teachers, administrators and community members to assess the book. Upon review, the committee ruled that the book's educational merit outweighed its shortcomings.

"We found the book provided valuable insight into the circumstances of the working poor and an opportunity for students to demonstrate mastery of the 'Financial Impact' competency," the committee reported.

Assistant Superintendent Chip McGee said the committee looked at the value of the book as a whole, rather than judging it on its objectionable passages. "We need to balance the instructional value of the book against its shortcomings, rather than looking at any isolated passage, and rather than looking at the belief system of the author," McGee said.

Though the committee ruled in the book's favor, district officials required teachers to notify parents before they assign the book in class..

Dennis and Aimee Taylor have already taken their son out of Bedford High School, and have begun teaching him at home, but continued to press the issue.

Dennis Taylor said Bedford taxpayers should not have to pay for *Nickel and Dimed*, which he said presents a biased portrayal of capitalism. "Nobody gets out of the hole in this book," Taylor said. "Really, is that the message we want to teach children in Bedford, who of all Americans ought to be capitalists, and produce the wealth that other people enjoy?" Reported in: *Manchester Union-Leader*, December 6; *Nashua Telegraph*, December 14, January 13.

college

Gainesville, Florida

Martha T. Nesbitt, president of Gainesville State College, had an adjunct art instructor's painting—dealing with themes of racism and violence in American history—removed from a faculty art show in late January. The painting depicts a Klansman and a lynching superimposed on a Confederate battle flag.

Faculty members criticized the decision to remove the painting and the fact that the president did so, they say, prior to consulting the arts faculty or anyone at the college's gallery. The work drew criticism from "Southern heritage" advocates, who like to protect Confederate images.

The artwork, titled "Heritage?," had been displayed for just over two weeks before removal. A cropped image of the piece was used to advertise the gallery show ahead of the opening reception.

"Sometimes I do my work to pose those questions—to pose what if?" said Stanley Bermudez, the art instructor who created the work. "I'm originally from Venezuela. You study American history, starting from way back when I already had some negative views of the rebel flag. Then in 1983, I came to the United States to go to college, and I remember seeing in Houston Klansmen and the hoods waving the Confederate flag around—and they had megaphones. That image stuck in my head."

The college's president defended her decision. "Sometimes a president has to make difficult decisions," said Nesbitt in an official statement. "First and foremost, I have to consider the impact of an action on the health and reputation of the institution. In this instance, I made a judgment call that the negative results would outweigh the positive ones."

Some faculty believe that a blog post by "Southern Heritage Alerts" that contained the president's office phone number and e-mail and denounced the artwork may have led to the piece's removal. The post's author, Arnold M. Huskins, a retired U.S. Air Force officer, said, "I did not like my tax dollars being used to portray the flag of soldiers in a negative light."

Many faculty at the college were furious about what they view as censorship. "This is a real lightning rod situation," said John Amoss, an assistant professor of humanities and fine arts and the college's art program coordinator. "I'm on the Faculty Senate, and we're starting to organize several initiatives," he said. "On the listservs, every single

comment we've received—and we are probably getting close to a hundred at this point—is condemning."

Adam Kissel, vice president of programs for the Foundation for Individual Rights in Education, also criticized the college for removing the painting, saying it was "inappropriate for the college president to unilaterally revoke the artistic license that it had given."

Bermudez said that prior to submitting "Heritage?" for approval for the show, he was aware that it might raise some eyebrows. He talked to the show's curator, Beth Sale. "I said, 'I know this is controversial,' " he said. "I asked, 'Can I show the piece?'" Bermudez said she agreed and said she thought it would promote discussion and dialogue.

He is used to getting a response on campus, but this is the first time it has come from the president's office. "I teach art appreciation, and one of the first things I tell my students on the first day of class is 'I'm going to show you a lot of artwork throughout the semester—some of it you're going to love, and some of it you're going to hate.' " Reported in: insidehighered.com, February 3.

art

Los Angeles, California

Los Angeles' Museum of Contemporary Art (MOCA), newly headed by New York transplant Jeffrey Deitch, has whitewashed a mural painted by internationally known street artist BLU. The mural, originally commissioned by MOCA for its upcoming Art in the Street exhibit, faced the Veterans Administration healthcare building on Temple Street in Downtown Los Angeles. The news of the December whitewashing spread like wild fire on arts blogs and LA blogs.

At its 2011 Midwinter Meeting in San Diego, the ALA Council on January 11 adopted a "Resolution on the Removal and Censorship of Artwork from the Smithsonian Institution's National Portrait Gallery" (see box)

"Was the mural too politically charged for members of the MOCA team?" A representative from MOCA commented that, in addition to facing the Veterans Administration, the mural overlooked a monument to Japanese-American soldiers, and said, "The museum's director explained to BLU that in this context, where MOCA is a guest among this historic Japanese American community, the work was inappropriate." Reported in: huffingtonpost.com, December 10.

Washington, D.C.

"Against all odds, the stodgy old National Portrait Gallery has recently become one of the most interesting, daring institutions in Washington. Its 2009 show on Marcel Duchamp's self-portrayal was important, strange and brave. 'Hide/Seek,' the show about gay love that it opened in October, was crucial—a first of its kind—and courageous, as well as being full of wonderful art." so wrote *Washington Post* art critic Blake Gopnik.

However, pn November 30, after a few hours of pressure from the Catholic League and various conservatives, the Smithsonian decided to remove a video by David Wojnarowicz, a gay artist who died from AIDS-related illness in 1992. As part of "Hide/Seek," the gallery was showing a four-minute excerpt from a 1987 piece titled "A Fire in My Belly," made in honor of Peter Hujar, an artist-colleague and lover of Wojnarowicz who had died of AIDS complications in 1987. And for 11 seconds of that meandering, stream-of-consciousness work (the full version is 30 minutes long) a crucifix appears onscreen with ants crawling on it.

That is the portion of the video that the Catholic League decried as "designed to insult and inflict injury and assault the sensibilities of Christians," and described as "hate speech"—despite the artist's own hopes that the passage would speak to the suffering of his dead friend. The irony is that Wojnarowicz's reading of his piece puts it smack in the middle of the great tradition of using images of Christ to speak about the suffering of all mankind. Wojnarowicz's video is nothing more than a relatively tepid reworking of that imagery, in modern terms.

In response to the removal, the Andy Warhol Foundation, one of the exhibit's lead sponsors, issued the following statement:

"The Warhol Foundation is proud to have been a lead supporter of Hide/Seek: Difference and Desire in American Portraiture, currently on view at the National Portrait Gallery in Washington, D.C. The result of ground-breaking curatorial scholarship by co-curators David Ward and Jonathan Katz, it is the first exhibition at a national museum to take on the question of homosexual representation in visual art. While the National Portrait Gallery is to be commended for presenting a major exhibition that addresses a politically sensitive subject so directly, the Foundation strongly condemns the museum's decision to remove David Wojnarowicz's video A Fire in My Belly from the exhibition, which it did on November 30th in response to threats from the Catholic League and several Washington politicians. These attacks, based on ignorance, hatred and fear, have no place in America's civil society and should certainly not dictate the actions taken by its cultural leaders.

"The NPG's decision to censor an art work because it offended the sensibilities of some of its visitors stands in stark opposition to the Warhol Foundation's longstanding commitment to supporting freedom of artistic expression. Indeed, the Foundation has contributed significant funds to organizations such as the National Coalition Against Censorship and the Brennan Center for Justice's Free Expression Policy Project to fight against exactly this kind of violation of First Amendment rights.

"Cultural institutions such as the National Portrait Gallery are ideal platforms for stimulating and hosting the discussions and debates that politically, culturally and socially engaged artwork can generate. It is disappointing that the museum chose to bow to political pressure and cut off any meaningful discourse before it could begin. On the other hand, it is heartening to witness the ways in which the artistic community around the country has responded to the museum's egregious behavior. We are particularly impressed by the immediate and passionate response of Transformer, a Warhol-funded organization in Washington, D.C that decried the museum's actions and began screening A Fire in My Belly in its gallery just days after it was pulled from the exhibition. In the week since, leading cultural institutions throughout the nation have spoken out against this act of censorship and many, such as the New Museum in New York and the Wexner Center in Columbus, Ohio, have programmed screenings of A Fire in My Belly. (For a full list of institutions, please see www.hideseek.org.)

"It is sadly ironic that attempts to suppress Wojnarowicz's work have led to its unprecedented exposure. We hope this unfortunate event will serve as inspiration to arts institutions everywhere to pro-actively seek out and support artists whose work challenges the status quo and brings important issues to public attention, however unpopular or controversial they might be. It is the Foundation's firm belief that exhibitions like Hide/Seek bravely expose the ideas, opinions, and creative work of artists who are less visible, oppressed or otherwise marginalized in our

(continued on page 79)

Resolution on the Removal and Censorship of Artwork from the Smithsonian Institution's National Portrait Gallery

WHEREAS some elected federal officials pressured the National Portrait Gallery to remove artwork in an act of censorship relating to themes of sexual orientation and religious viewpoint;

WHEREAS some elected federal officials threatened to restrict funding of materials related to sexual orientation and religious viewpoint within their publicly funded institutes; and

WHEREAS "We celebrate and preserve our democratic society by making available the widest possible range of viewpoints, opinions and ideas" (Policy 53.9, "Libraries: An American Value"); and

WHEREAS "Fair and equal representation of all the diverse expressions of life of the citizens of these United States is protected by the First Amendment and by state constitutions, and attempts to proscribe such representation in publicly funded libraries violates freedom of speech" (ALA "Resolution on Threats to Library Materials Related to Sex, Gender Identity, or Sexual Orientation");and

WHEREAS materials should not be proscribed or removed because of partisan or doctrinal disapproval" (Policy 53.1, *Library Bill of Rights*); and

WHEREAS "The American Library Association stringently and unequivocally maintains that libraries and librarians have an obligation to resist efforts that systematically exclude materials dealing with any subject matter, including sex, gender identity, or sexual orientation" (Policy 53.1.15, " Access to Library Resources and Services Regardless of Sex, Gender Identity, or Sexual Orientation"); and

WHEREAS "Libraries should challenge censorship" and "cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas" (Policy 53.3-4, "Library Bill of Rights"); and

WHEREAS the American Library Association recognizes that any abridgement to the freedom of speech in publicly funded galleries or museums also threatens libraries: Now, therefore, be it

RESOLVED that the American Library Association (ALA):

(1) commends the National Portrait Gallery for its inclusion of materials that reflect the diversity of our society, including those related to religious viewpoint, specifically as presented in the Hide/Seek Exhibition;

(2) commends the National Portrait Gallery for its inclusion of materials that reflect the diversity of our society, including those related to sex, gender identity, and sexual orientation, specifically as presented in the Hide/Seek Exhibition; (ALA Resolution on Threats to Library Materials Related to Sex, Gender Identity, or Sexual Orientation);

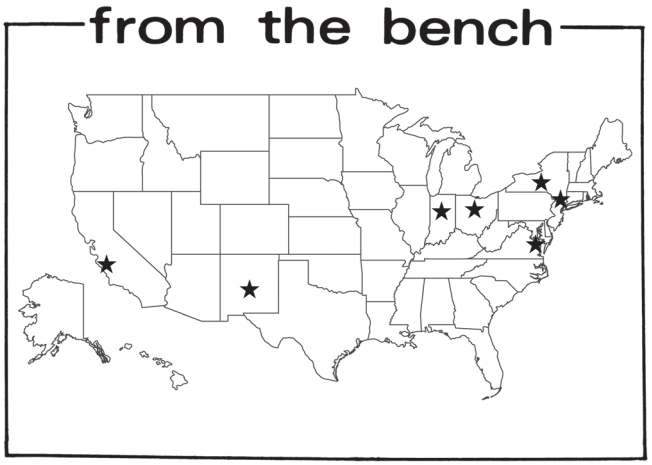
(3) condemns the censorship of the Hide/Seek Exhibition at the National Portrait Gallery;

(4) urges the National Portrait Gallery to immediately reinstate the video artwork by David Wojnarowicz to the Hide/Seek Exhibition at the National Portrait Gallery;

(5) urges the National Portrait Gallery to refuse to censor by removal or alteration other works of art from any exhibition or collection; and

(6) urges the Smithsonian Institution to fight censorship of works of art or collections dealing with any subject matter, including sex, gender identity, sexual orientation, or religious viewpoint in its national galleries, museums, archives and libraries.

Adopted by the Council of the American Library Association, January 11, 2011.



U.S. Supreme Court

Employees of government contractors, including scientists and engineers who work on government space programs, must submit to intrusive background checks if they want to keep their jobs, the Supreme Court ruled unanimously January 19.

Federal employees have long been required to submit to background checks. In 2004, after a recommendation from the 9/11 Commission, the requirement was extended to employees of government contractors. Twenty-eight employees of the Jet Propulsion Laboratory, a NASA center operated by the California Institute of Technology, sued, saying the checks would violate their constitutional right to "informational privacy." The employees worked on civilian space missions and research.

In 2008, the United States Court of Appeals for the Ninth Circuit provisionally agreed with the employees, ordering parts of the government background checks halted while their case went forward. The court said that two kinds of questions in the government forms raised constitutional concerns. The employees were asked about drug use and counseling, and they were required to sign a form authorizing the government to collect information from schools, landlords, employers and others.

That additional information was sought through another form, this one soliciting "adverse information," including "violations of the law," "financial integrity," "abuse of alcohol and/or drugs" and "mental or emotional stability." There was also a space on the form that invited "derogatory as well as positive information."

In an opinion for six justices, Justice Samuel A. Alito Jr. said he assumed for purposes of the decision that a constitutional right to avoid disclosing personal information exists, but he did not say what part of the Constitution it was grounded in or what kinds of information it covered. He did say that the information sought here did not violate whatever such right may exist. Justice Elena Kagan did not participate in the case, because she had worked on it as solicitor general.

The question about drug treatment and counseling, Justice Alito wrote, was part of "a reasonable, and indeed a humane, approach."

"The government, recognizing that illegal drug use is both a criminal and a medical issue, seeks to separate out those illegal drug users who are taking steps to address and overcome their problems," he wrote.

The open-ended questions directed to the employees' references, Justice Alito said, are "an appropriate tool for separating strong candidates from weak ones." Such questions are commonly used by both public and private employers, he added.

In addition to finding the questions reasonable, Justice Alito said that the plaintiffs' privacy concerns should be allayed because the Privacy Act imposes strict restrictions on how the government could use the information it obtained.

Justice Antonin Scalia, writing for himself and Justice Clarence Thomas, issued a caustic concurrence. He said he "of course" agreed with the result in the case, saying the plaintiffs' objections to the background checks were ridiculous. "The contention that a right deeply rooted in our history and tradition bars the government from ensuring that the Hubble telescope is not used by recovering drug addicts" is, he said, "farcical."

But Justice Scalia aimed his harshest criticism at the six justices who signed the majority opinion, returning to a theme he pressed last year—that the court is violating its duty and harming its reputation in issuing vague decisions. "Whatever the virtues of judicial minimalism," he wrote, "it cannot justify judicial incoherence."

The majority opinion, he continued, "provides no guidance whatsoever for lower courts" and "will dramatically increase the number of lawsuits claiming violations of the right to informational privacy." Though the court ruled against the plaintiffs, he said, the majority opinion amounts to "a generous gift to the plaintiffs' bar."

Justice Scalia said he would have taken a simpler approach in the case, *NASA* v. *Nelson*. "I would simply hold that there is no constitutional right to 'informational privacy,' " Justice Scalia wrote. "Like many other desirable things not included in the Constitution," he wrote, "'informational privacy' seems liked a good idea." But he said it should be enacted through legislation rather than imposed by judges through constitutional interpretation.

Justice Alito, in response, said there were good reasons for failing to "provide a definitive answer" to the threshold question in the case. The government, in defending the suit, had not asked the court to reject a right to informational privacy. "It is undesirable," Justice Alito wrote, "for us to decide a matter of this importance in a case in which we do not have the benefit of briefing by the parties." Reported in: *New York Times*, January 19.

In April a divided panel of the U.S. Court of Appeals for the Fourth Circuit ruled in favor of a state regulation barring alcohol advertising in student-run publications. On November 29, the U.S. Supreme Court said it would essentially uphold that ruling by refusing to hear an appeal from the college newspapers at the University of Virginia and Virginia Tech. As is customary, the Supreme Court's announcement came without comment, even though one of its members, Justice Samuel A. Alito Jr., issued a contradictory ruling six years ago, while serving on a federal appeals court, in a case involving the University of Pittsburgh's campus newspaper. The Virginia regulation, initially rejected by a federal district-court judge, was adopted in order to curtail underage drinking. Reported in: *Chronicle of Higher Education* online, November 29.

The Supreme Court heard arguments October 6 in a highly charged case involving protesters objecting to homosexuality who picketed a military funeral. The father of a fallen Marine sued members of a Kansas church who had used his son's funeral to spread their message that God is punishing the United States for its tolerance of homosexuality by killing its soldiers.

"We're talking about a funeral," Sean E. Summers, a lawyer for the father, Albert Snyder, told the justices. "Mr. Snyder simply wanted to bury his son in a private, dignified manner."

The lawyer on the other side, Margie J. Phelps, said the First Amendment protected the protest, where seven pickets at some distance from the funeral carried signs with messages like "Thank God for dead soldiers" and "God hates you."

Phelps is a daughter of the pastor of the church, Westboro Baptist Church of Topeka, Kansas. Her argument alternated between smooth exposition of First Amendment doctrine and support for the church's message.

"Nation, hear this little church," she said. "If you want them to stop dying, stop sinning."

Justice Ruth Bader Ginsburg noted that state and local governments had enacted laws creating content-neutral buffer zones around funerals. She suggested that those sorts of laws were a better response to protests than allowing private-injury suits. Justice Samuel A. Alito Jr. said the existence of a buffer zone imposed by law did not necessarily pre-empt other remedies.

Snyder won an $11 million jury verdict against the pastor, Fred W. Phelps Sr., and his church, for intentional infliction of emotional distress, which required proof of outrageous conduct, and for invasion of privacy. But a federal appeals court overturned the verdict on First Amendment grounds. The October argument featured disputes about the facts and a parade of hypothetical alternatives.

Summers said that some of the signs made the fallen Marine, Lance Cpl. Matthew A. Snyder, and his family their targets, including one that said, "You're going to hell."

Justice Ginsburg noted that the church used those signs at many protests. "It sounds like the 'you' was the whole society, the whole rotten society in their view," she said.

Summers then made a concession that some justices seemed to view as problematic, saying that his client would have had no case if the signs were purely political protests against, say, the war in Iraq. "So the intrusion upon the privacy of the funeral is out of the case," Justice Antonin Scalia mused.

Summers tried to distinguish his case from the leading decision in this area, *Hustler Magazine* v. *Falwell* in 1988, which overturned a jury award in favor of the Rev. Jerry Falwell for intentional infliction of emotional distress. That case involved a public figure, Summers said, while Snyder was a private one.

Justice Elena Kagan responded with a quotation from the *Falwell* decision. "'Outrageousness' in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression," she said, quoting Chief Justice William H. Rehnquist's majority opinion.

"How is that sentence less implicated," Justice Kagan asked, "in a case about a private figure than a case about a public figure?" Summers said private grief raised different issues.

Justices Kagan and Alito asked Phelps questions about other sorts of potentially hurtful conduct, like following a wounded soldier around or accosting a grandmother after a visit to a soldier's grave. Phelps for the most part parried the questions, saying that antistalking laws and the "fighting words" exception to the First Amendment could address those situations.

The Reporters Committee for Freedom of the Press and 21 news organizations filed a brief supporting the Kansas church. It said the First Amendment protects even hateful speech on matters of public concern.

Before the argument in the case, *Snyder* v. *Phelps*, members of the church protested outside the Supreme Court. Abigail Phelps, another of Mr. Phelps's daughters, carried a sign that said "America is doomed."

Ms. Phelps said she expected the court to rule in favor of the church. "They're going to uphold the law of the land that you may express a contrary view in a public forum without being sued," she said. Reported in: *New York Times*, October 6.

It has been almost 60 years since the Supreme Court last had a hard look at the state secrets privilege, which can allow the government to shut down litigation by invoking national security. In the years since the attacks on Sept. 11, 2001, the government has invoked the privilege frequently

to scuttle cases, saying they would frustrate its efforts to combat terrorism.

The privilege was at the center of an argument at the court January 18. But the justices did not seem inclined to use the opportunity to give the lower courts guidance about its contours.

The case arose from a 1988 contract between the Navy and two companies, General Dynamics and McDonnell Douglas, to develop a stealth aircraft called the A-12 Avenger. Three years later, dissatisfied with the contractors' progress, the Navy declared them in default and demanded the return of $1.35 billion. The contractors sued, asking to keep the money and seeking $1.2 billion more. They said their work had been frustrated by the government's failure to share classified technology. The government disputed that, but would not explain why, invoking the state secrets privilege.

An appeals court repeatedly ruled against the companies, saying at one point that national security interests trumped the companies' rights under the Constitution's due-process clause.

There was no dispute during the argument that the government was entitled to invoke the privilege. The question was what should have happened when it did. The two sides also seemed to agree that the answer to that question could be found in a passage in the leading state-secrets decision, *United States* v. *Reynolds*. That decision, from 1953, dismissed a case brought by the widows of men who died when a B-29 bomber crashed in Waycross, Georgia, during a secret mission.

But the court in *Reynolds* said the case might have turned out differently if the government had been using the privilege as a litigation shield rather than as a sword. Writing for the majority, Chief Justice Fred M. Vinson said that in criminal cases, for instance, it would be unconscionable to allow the government "to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense."

"Such rationale," Justice Vinson continued, "has no application in a civil forum where the government is not the moving party."

At the January 18 argument, Neal K. Katyal, the acting United States solicitor general, said the government was not the moving party referred to in *Reynolds* here because of the way the contract was designed and the way claims against the government must be litigated.

Chief Justice John G. Roberts Jr. told Katyal that the government's proposed approach "is a pretty convenient rule for you."

Justice Elena Kagan agreed, saying "that really does sound like a tails you win, heads you win."

Carter G. Phillips, a lawyer for the contractors, said the passage in *Reynolds* meant that the government was not free both to demand money from his clients and to invoke the privilege when they sought to present a defense. But Justice Stephen G. Breyer said the statement in *Reynolds* did not fit the circumstances of the new case particularly well.

"If we accept as a principle of law what was said in Reynolds, a criminal case or whatever, and apply it to government contracting, where sophisticated contractors are perfectly capable of negotiating their own contract, we are not just throwing a monkey wrench into the gears of government contracting," Justice Breyer said. "We're throwing the whole monkey."

Justice Antonin Scalia proposed to resolve the case based on what he called "the 'go away' principle of our jurisprudence." That principle means, he explained, that the courts should do nothing when they cannot determine which side is right because of the state-secrets privilege. "So to say 'go away' means everybody keeps the money he has," Justice Scalia said.

Phillips, representing the contractors, seemed open to Justice Scalia's approach. "Maybe to some extent you could say we're sort of being a little greedy," he said, in asking for $1.2 billion on top of the $1.35 billion his clients hope to keep.

Justice Sonia Sotomayor seemed both intrigued by Justice Scalia's proposal and uncertain about whether it represented a principled way to resolve the two consolidated cases, *General Dynamics* v. *United States*, and *The Boeing Company* v. *United States*, (Boeing has merged with and is the corporate successor to McDonnell Douglas.)

"Mr. Phillips," Justice Sotomayor said, "give us a way, a reasoned way, to reach the result Justice Scalia is suggesting, because you are being greedy. You admitted it." He did not respond directly, but Justice Kagan expressed doubts about having multibillion-dollar disputes turn on the happenstance of which side was holding the other's money. Reported in: *New York Times*, January 18.

colleges and universities

Albuquerque, New Mexico

A state-court judge has rebuked the University of New Mexico over its handling of a professor who participated with current and former students in a sadomasochistic phone-sex operation. The judge ruled that administrators there effectively drove one faculty member who voiced concerns about her colleague's extracurricular activities to leave her job.

In a decision issued in late January, Judge Ted C. Baca of the state's second judicial district, in Albuquerque, upheld a state labor board's decision to force the university to award unemployment benefits to Joy Harjo, a professor of creative writing. In accepting Harjo's claims that she was due unemployment benefits because she left her job involuntarily, the judge said university administrators had responded to her demands that they discipline the moonlighting professor by making her own working conditions so difficult "she had no choice but to resign."

The case before Judge Baca, involving a university appeal of the state labor board's decision, is one of several

legal disputes stemming from the university's treatment of complaints against Lisa D. Chávez, a tenured associate professor of English, after she was discovered in 2007 moonlighting as the phone-sex dominatrix "Mistress Jade." The faculty members who complained about Chávez said they were especially concerned that she had posed in promotional pictures for the phone-sex company sexually dominating one of her own graduate students.

The university has been named in separate lawsuits filed by two other professors in its English Department—Sharon Oard Warner and Diane M. Thiel—both of whom argue that they were subject to administrative retaliation for demanding that the university do more to punish Chávez than simply faulting her for poor judgment and requiring that she quit the phone-sex job. In a third lawsuit, Warner's husband, Teddy D. Warner, a psychologist at the university's medical school, argues that he suffered a pay cut and was denied a promised private office in retaliation for his wife's actions.

Harjo, a prominent American Indian poet, cheered Judge Baca's decision, saying "this victory gives me encouragement that justice will be served" for the others whose cases against the university are pending. A spokeswoman for the university said that officials there were unprepared to comment and that she did not know whether they planned an appeal.

Judge Baca's ruling said his review of the record in the dispute over Harjo's unemployment benefits "support a reasonable inference that Harjo legitimately felt humiliated, degraded, and concerned for her job." In explaining his conclusion, the judge cited testimony that Harjo had been ridiculed and screamed at in public by the department's chairman; that Chávez had threatened lawsuits against her accusers on the faculty and influenced students not to work with them; and that the attention drawn to the department by the scandal hurt the reputation of Harjo and other faculty members.

In addition, the judge held, it is clear that Harjo "felt great concern for her students but felt unable to protect them." By the time she resigned, Harjo "was no longer able to do her job effectively because of her own mental state and the realities of the program," the ruling says.

The practical effect of Judge Baca's decision was to thwart the university's effort to force Harjo to repay about $11,000 in unemployment benefits based on its claim that she had quit her job voluntarily. Reported in: *Chronicle of Higher Education* online, February 2.

Ithaca, New York

A three-judge panel of the U.S. Court of Appeals for the Second Circuit has held that a Cornell University scientist's criticism of a colleague's research amounted to protected speech. In a ruling dismissing a defamation lawsuit brought against Daniel Klessig, the former head of a plant-research institute, by one of the institute's former postdoctoral research associates, the Second Circuit panel held that Klessig's statements were privileged because he was morally and legally obliged to voice his concerns about the validity of plant studies the associate had done. Klessig had retracted articles on the associate's research and raised questions about it after other postdoctoral students could not replicate her findings and she refused to return to Cornell to do so. Reported in: *Chronicle of Higher Education* online, February 3.

broadcasting

New York, New York

A federal appeals court threw out a $1.21 million penalty against 44 ABC television stations for violating broadcast indecency standards by airing an "NYPD Blue" episode that showed a woman's nude buttocks.

The January 4 decision followed the New York court's ruling last July that the indecency policy under which the U.S. Federal Communications Commission had assessed the penalty was unconstitutionally vague. The FCC had imposed in February 2008 a $27,500 fine against each of the 44 ABC affiliates for showing the "NYPD Blue" episode five years earlier. Walt Disney Co owns ABC.

"We are extremely gratified at the court's clearly correct ruling," said Seth Waxman, a partner at law firm WilmerHale and former U.S. solicitor general, who represents ABC.

Austin Schlick, the FCC general counsel, in a statement said the decision confirms that the earlier ruling was "excessively broad in rejecting the FCC's ability to use context to evaluate indecency cases."

The FCC had tightened its indecency policy in 2004 after the on-air use of profanity by U2 lead singer Bono and Janet Jackson's breast-baring at the 2004 Super Bowl. But the U.S. Court of Appeals for the Second Circuit, in a case involving News Corp's Fox Television, CBS Corp and others, said in July that policy violated the First Amendment and created "a chilling effect" on broadcasts.

It later rejected an FCC request to reconsider the case.

The "NYPD Blue" episode showed Connie McDowell, a character who had moved in with detective Andy Sipowicz, disrobing as she prepared to shower and being seen by Sipowicz's young son. Both characters were embarrassed, and ABC said the scene was intended to show the awkwardness between a child and his father's new romantic partner.

In the ruling, the appeals court found "no significant distinction" between the "NYPD Blue" case and the "fleeting expletives" at issue in the Fox case.

Tim Winter, president of the Parents Television Council watchdog group, in a statement called the latest ruling

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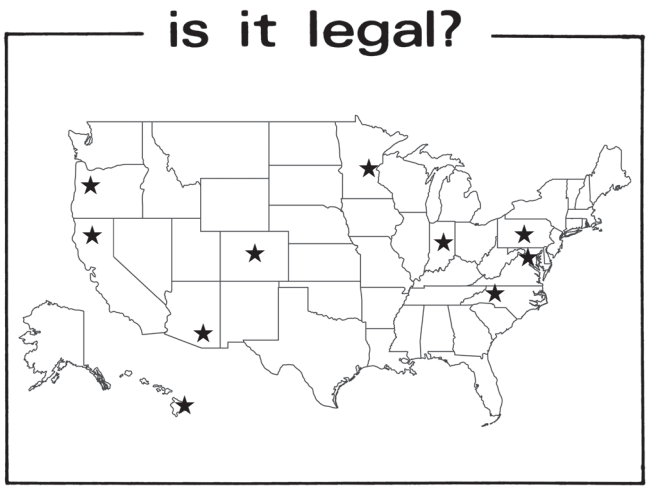


libraries

Redding, California

Two groups are threatening to sue the city of Redding if it goes ahead with a proposed policy that restricts speech outside the main public library. The North State Tea Party Alliance and the American Civil Liberties Union of Northern California have called the city's effort to regulate leafleting, pamphleteering and other literature distribution around the library entrance unconstitutional.

The Shasta Public Libraries Citizens Advisory Commitee was scheduled to consider the proposed pamphleteering policy February 2. The City Council, acting as the Redding Municipal Library Board, must give any library policies final approval.

Redding officials and civil libertarians clashed on whether the city has any right to restrict pamphleteers outside the library who are not purposefully interfering with patrons. Redding officials are too willing to restrict speech when considering the convenience of library users, representatives from both groups have said in an exchange of letters dating to December.

The city wants people handing out literature to sit behind a 30-square-foot table in no more than six chairs on the far left side of the entrance. Patrons interested in picking up a pamphlet or leaflet can venture to the table. The city also wants pamphleteers to reserve table space at least 72 hours before setting up there. Library staff members may approve shorter-term requests.

Civil libertarians have said the city cannot legally limit pamphleteers to a table. People passing out literature should be able to walk up to anyone going in or out of the library and leave leaflets on windshields in the parking lot. Tea party and ACLU representatives also criticized the city's proposed reservation system for the literature table.

The city has no legal basis for taking "the unusual step of requiring citizens to inform the government in advance of expressive activity," Donald Yost, board chairman of the ACLU's Shasta, Tehama and Trinity County chapter, said in a letter the city.

Tim Pappas, assistant Shasta County public defender who represents the North State Tea Party Alliance pro bono, has compared the city's proposed regulations to a sieve that can hold no constitutional water.

City Attorney Rick Duvernay twice has modified the proposed regulations to better balance First Amendment free speech protections against the library's need to keep its entrance clear for patrons. He struck a controversial proposal to require city approval for any material handed out on the library campus. But Duvernay has refused to budge on the fundamental issue of allowing pamphleteers to walk up to patrons and leaflet cars and trucks.

"If (library patrons) are carrying a large stack of books, in a hurry, or simply not interested, library patrons should not be intimidated, detained or handed material against their will," Duvernay said in a letter to Pappas. "Speech is not the only freedom or liberty interest recognized by the courts," Duvernay said. "It is not a trump card right to squash all other rights."

Pappas strongly disagrees. Free speech is such a fundamental right it's worth a patron's momentary inconvenience, he said. "If this is the best the city can do in justifying the restrictions it proposes for the exterior library campus, we, as citizens of this city, are in dire trouble," Pappas said.

The Redding Library opened on Parkview Avenue nearly four years ago. But no one had asked the city about handing literature to passers-by in the library entrance until September, when Bostonian Tea Party members sought permission to provide pocket-size Constitutions and quotes from the Founding Fathers during Constitution Week.

The city began working on a set of rules on pamphleteering near the library entrance after at least two more groups asked about handing out literature there. The council first considered the regulations November 15 but put off a decision to allow Pappas and others to work out a compromise with city officials drafting the rules.

Tea Party, ACLU and city officials have disagreed from the beginning about whether space outside the library is a traditional gathering place like a town square where speech restrictions are few. Duvernay has compared the library to an airport or transfer station where government has a right to limit expression so it doesn't interfere with the building's core function. The city has drafted its own set of rules for the library so it can provide a quiet place to read and study, Duvernay said.

Pappas and Yost agree the city has a right to regulate behavior inside the library building. But the outside is a public space, they said. The library campus abuts a city park and is part of the larger Civic Center campus, where no such restrictions on speech exist, Pappas and Yost have said. And never before has the city tried to regulate behavior outside the library, Pappas said.

The city has, in fact, already regulated smoking outside the library. After receiving numerous complaints, the council in 2008 tripled the state-mandated no-smoking zone around the building's entrance to 60 feet. The council in 2009 extended the smoking ban to the entire library campus when complaints continued. Last year, the council expanded the smoking ban to the rest of the Civic Center campus but made it voluntary beyond the library.

Smoking, of course, does not enjoy the same constitutional protections as speech. Reported in: *Redding Record-Searchlight*, January 28.

Indianapolis, Indiana

Registered sex offenders would be banned from Indiana public libraries if Rep. David Yarde has his way. In January, Yarde introduced H.B. 1100, which would create the criminal offense of "sex offender library trespass." The measure provides: "A registered sex offender who knowingly or intentionally enters a public library commits sex offender library trespass, a Class D felony."

The bill does allow for an exception for entering public libraries to vote as long as the offenders don't remain in the libraries longer than is necessary to vote.

In New Mexico, a registered sex offender represented by the New Mexico ACLU successfully challenged a complete ban on sex offenders in public libraries in Albuquerque. The mayor had established the ban by executive order. In *Doe* v. *Albuquerque*, a federal district judge in New Mexico ruled in May 2010 that the ban infringed on Doe's First Amendment right to receive information and ideas from public libraries.

"The Court concludes that the regulation in this case, as specifically written, which is a complete ban against registered sex offenders in any and all City of Albuquerque public libraries, is not narrowly tailored, nor does it leave open ample alternative channels for communication," Judge M. Christina Armijo wrote.

However, in a case involving public parks, the U.S. Court of Appeals for the Seventh Circuit ruled that the city of Lafayette, Indiana, did not violate the First Amendment when it excluded a known sex offender from city parks. The Seventh Circuit found in *Doe* v. *City of Lafayette* that Doe's First Amendment rights were not violated because Doe did not go to the parks to express himself. The court majority reasoned that "because there is no expression at issue, First Amendment doctrine simply has no application here."

Undoubtedly many sex offenders wish to go to public libraries to read and check out books. So there is an expressive-related reason for sex offenders to go to the library. Under modern First Amendment law, a complete ban on sex offenders appears constitutionally problematic. Reported in: firstamendmentcenter.com, January 19.

schools

Tucson, Arizona

Arizona may be riddled with anti-government white militias, radio stations pumping out racist hate speech and politicians who wave guns as they denounce the oppressive rule of Washington. But Arizona's attorney general apparently believes a real threat to the stability of the US government is being fomented in a handful of high schools in a liberal corner of the desert state.

Tom Horne has declared classes in Mexican-American history and social studies in the city of Tucson illegal on the grounds that they are "propagandising and brainwashing" students into overthrowing the constitutional government and hating white people.

Horne ordered schools to scrap the ethnic studies programs under a law he wrote in his previous role as Arizona's education superintendent. He has not banned similar classes dealing with black or Native American history on the grounds that no one has complained about them.

Critics, including teachers of the classes he wants to scrap, accuse Horne of political opportunism by exploiting growing hostility to people of Hispanic origin in a state that recently passed controversial anti-immigrant legislation.

José Gonzalez, who lectures at a Tucson high school, is one of eleven teachers suing to prevent that ban from being enforced. "If you were to look at the legacy of Tom Horne and his past eight years as the superintendent of instruction in Arizona, you will see that he has targeted Mexican-American people. He did away with bilingual education. He was very proud of that," said Gonzales. "He's a politician and, quite frankly, a very successful politician so he's pandering to these xenophobic sentiments here in Arizona and that's helping him get elected."

Horne began pushing to abolish Mexican-American studies after an incident in 2007 when a prominent trade unionist, Dolores Huerta, told high school students in Tucson that Republicans hate Latinos. Horne, a Republican, sent an aide to the school to counter the message, only to have him met by a group of students who turned their backs and raised a fist.

Infuriated, Horne blamed the teachers and wrote a law barring Arizona schools from holding classes that breached any of four prohibitions: promoting the overthrow of the government, creating resentment toward a race or class of people, focusing on students of one ethnic group or promoting ethnic solidarity.

Teachers of the offending classes acknowledge that they deal with sensitive issues, such as the past and continuing discrimination against Hispanic people in the US. They also teach the role played by figures such as César Chávez, the Mexican-American civil rights activist and trade union leader who was instrumental in improving the lot of agricultural workers, many of whom were immigrants.

Among other things, state officials have objected to classes portraying Benjamin Franklin as a racist for owning slaves and for promoting a climate of "victimisation" by teaching that white people have been more privileged in the US. The classes involve Latino literature, although Shakespeare is on the curriculum too, as well as books such as Rodolfo Acuña's *Occupied America: A History of Chicanos*, which Horne has described as fostering "ethnic chauvinism" and promoting separatism.

The book, which describes Mexican- Americans as "captives of a system that renders them second-class citizens", is in its seventh edition and used at universities across the US.

The teachers say that these books are the basis for robust discussion about the past and present, which inevitably touches on race in the US – particularly when about 30% of Arizona's 6.5m people are of Hispanic descent and where businesses once allegedly carried signs saying: "No Mexicans or dogs allowed."

"American history is supposed to teach the history of the United States and the United States is made up of immigrants," said Gonzales. "Everyone is an immigrant here with the exception of the indigenous people, so they all have their story. The narrative that's given is traditional so Mexican-Americans' contribution to this country have been omitted and their experience has not always been a good one. We should at least be able to talk about it."

Critics said that Horne's law could mean an end to teaching about slavery because of the resentment it might cause among black students toward whites. Despite this the Arizona legislature passed the legislation last year. It was put on the statute books at the beginning of this month, just as Horne took up his new job.

Within days, he told the schools that their Mexican-American studies classes breached all four criteria, and ordered them shut down. The classes continue while the issue is resolved in the courts.

Horne has been backed by some Tucson teachers such as John Ward, who is of Hispanic origin and said the classes indoctrinate "students, based primarily on ethnic divisions, in the belief that there is a war against Latino culture perpetrated by a white, racist, capitalist system".

The Tucson school board turned down Horne's request for every Mexican-American studies class to be videotaped. But teachers say the political attacks have forced them to watch what they say in class.

"There is a chilling effect," said Lorenzo Lopez. "There's a lot more pause in what we say. Because of the unprecedented scrutiny we are a lot more cautious how we raise issues, how we discuss them. It's really hampered the dialogue that takes place." Reported in: *The Guardian*, January 21.

colleges and universities

Colorado Springs, Colorado

Five faculty members at the U.S. Air Force Academy and a watchdog group, the Military Religious Freedom Foundation, filed a lawsuit January 31 asking a federal judge to block a National Prayer Luncheon at the academy, saying it violates the First Amendment's establishment clause. Four of the professors are proceeding as "John Doe plaintiffs," the complaint says, because they fear retribution from the command structure at the academy, which has faced accusations of condoning religious proselytizing in the past.

The keynote speaker at the prayer luncheon, set for February 10, was to be a retired Marine lieutenant, Clebe McClary, who is described on his Web site as a motivational speaker "in the service of the Lord's Army." In a statement quoted by the Associated Press and the *Air Force Times*, the academy said that attendance at the event would be voluntary and that it would "let the legal process take its course." Reported in: *Chronicle of Higher Education* online, January 31.

Hilo, Hawaii

Shit happens. That's reality, according to Daniel Petersen, who has taught philosophy for 21 years at Hawaii Community College and the University of Hawaii at Hilo. And it's a reality he shared—in those words—with his students. Now he says he is sharing that reality in the collapse of his teaching career, which he attributes to the aftermath of a complaint from the father of a student over a few instances of profanity in his class at the community college.

Over the last year, Petersen has been fighting with administrators over the complaint and his response to it—and he recently quit to protest what he considered unreasonable limits on his free speech.

Why share with students that "shit happens"? Petersen said that in the beginning of his introductory philosophy courses, he likes to challenge students, and get them out of easy ways of thinking. "People think they are in control, but they walk outside and an airplane engine falls on their heads," he said in an interview. That's what he's trying to get across—that you can't determine your fate.

Another point he tries to make as the course begins is that extremists are determined to impose their will not only on individuals, but on entire belief systems. And he talks about that idea by saying that Osama bin Laden says, in effect: "If you don't believe in me and my way, I will kill you and your goddamn god."

A third point he makes at the beginning of the course is that he's well aware that his style isn't for everybody. So he says: "If you don't like the way I teach, the way I smell, or the way I look, there is the door—you don't have to take my class."

Petersen said that he is intentionally provocative—and that this grabs students and gets them thinking, which is what he considers to be his job. But last year, one student in his introductory logic course wasn't happy with the remarks, and shared them with her father, Timothy Jahraus, who wrote to the college to complain. In a letter, Jahraus wrote that his daughter dropped the course and that the college should be concerned about Petersen.

"Instructors, people in an authority position, with influence and power over their students, have no right to use profanity in the classroom," he wrote. "It demonstrates a paucity of verbal ability and total lack of respect for the students he instructs. This instructor's action is an abuse of the authority position he holds and a betrayal of whatever confidence the students may have had in his ability to deal fairly with them."

Jahraus added: "Our institutions of higher learning need to take the high ground intellectually and in general deportment rather than devolving to the lowest vernacular."

Petersen said that he was called to meet with administrators to discuss the letter and was urged to stop swearing in class. Not only did he refuse to do so, but he then used Jahraus's letter for a class discussion and—at the request of students—posted the letter on a class website.

A series of exchanges between Petersen and college officials followed, including demands that he stop swearing or using the letter, a suspension, and debates over his teaching style. He said that the demands reached a point where he was being given ultimatums that would affect his teaching, so he quit. While a local newspaper reported that he has threatened not to finish grading his students this semester, he said that was incorrect. Petersen said that he will grade the papers, and turn them over to his lawyer (who is preparing a lawsuit)—and that if the college wants the grades, it will have to see his lawyer.

The University of Hawaii System, of which Hawaii Community College is a part, issued the following statement from Linda Johnsrud, executive vice president for academic affairs and provost: "We do not comment on personnel matters, but the University of Hawaii holds faculty responsible for fulfilling their obligations to students. We do not want students to be victims in a personnel dispute."

Students have been speaking out on Petersen's behalf. *Ke Kalahea*, the student newspaper of Hawaii-Hilo and Hawaii Community College, ran an editorial called "Save Dan." The editorial called Petersen "one of the most engaging lecturers the community college has." Of the complaint, the editorial said: "When Timothy Jahraus complained, the community college should not have ducked, turned tail, and run—they should have stood their ground and supported veteran lecturer Daniel Petersen."

Some on the campus have speculated that Petersen was punished more for sharing the letter than for swearing. Petersen said that he does not believe Jahraus's daughter ever registered for the course, and that she was definitely not a student in the course when he shared the letter. So, he said, he shared a letter of complaint about himself, not anything private about one of his students.

Petersen said that he considers what happened to him a violation of his academic freedom, and he noted that his teaching style on the day Jahraus's daughter was in class wasn't any different from his approach over the years. "How could it have been right for 21 years and then it's wrong?"

It's important to note, Petersen said, that he swore to make a point and "I have never sworn at a student." He also said that the words he used in that class are the extent of the expletives he uses in teaching. "If people can't handle that, they don't belong in a college classroom," he said. Reported in: insidehighered.com, December 16.

Minneapolis, Minnesota

The University of Minnesota was sued in federal court November 30 over allegations that a website maintained by its Holocaust studies center defamed a Turkish-American organization in a way that raised First Amendment and due process issues. The suit came just days after the Holocaust center removed the material that is the focus of the suit—although the university maintains that it acted as part of a routine review and not because of the threat of litigation.

Underlying the legal dispute is the debate over what happened to the Armenians during World War I. Among most scholars of genocide, there is a wide consensus that the deaths (some say up to 1.5 million of them) constituted a genocide. A minority of scholars (and many Turkish-American groups) disagree—and some of those who differ have been called "deniers." The material that was removed from the Minnesota website was a list of "unreliable websites" for research on genocide—including the website of the Turkish Coalition of America.

The Minnesota lawsuit follows a retraction (under legal pressure) by the Southern Poverty Law Center of statements it made about a retired University of Massachusetts professor who has written books that cast doubt on the view that the Armenians suffered a genocide. David Saltzman, a lawyer involved in the suit against Minnesota and the one against the Southern Poverty Law Center, said that "the prospect of further litigation is great."

Minnesota's Center for Holocaust & Genocide Studies (CHGS) features a range of materials for use by students, researchers and teachers. The list of "unreliable" links was included in the mix of offerings.

Bruno Chaouat, director of the center, posted a note explaining that a review of the website had been going on—irrespective of the complaints of Turkish-American

groups. "I decided to remove the section providing links to 'unreliable websites.' My rationale was quite simple: never promote, even negatively, sources of illegitimate information," he wrote. "During almost twenty years working in higher education, I have never put a dubious source on a syllabus for my students, not even for the purpose of delegitimizing the source. The decision to remove the links to 'unreliable websites' was made before the Turkish Coalition of America began its efforts to intimidate CHGS into removing the links. The links were replaced with legitimate information devoted to the history, ideology and psychology of Holocaust and genocide denial."

Chaouat added that he believes that what happened to the Armenians was in fact genocide. "On behalf of the CHGS, I want to reiterate that in accordance with the vast majority of serious and rigorous historians, the CHGS considers the massacre of the Armenians during World War I as a case of genocide."

The Minnesota Holocaust studies center still features a "warning to researchers" that states: "Students and researchers should be aware that there is a proliferation of websites operated by Holocaust and genocide deniers that CHGS and others in the academic community consider unreliable. CHGS encourages all researchers to exercise caution when they use the Internet and any other media (films, books, journals, etc). Our center, staff, advisory board and experts are here to assist researchers on a case-by-case basis. We consider it our obligation to orient researchers toward reference materials which, in our opinion, represent the best scholarship in the field of Holocaust and genocide issues."

Saltzman, the lawyer for the Turkish Coalition of America, said that the removed list amounted to defamation of the views of the Turkish group and had the impact of limiting academic freedom because students would feel discouraged from quoting materials from a group labeled "unreliable" by a university source. Further, he said that there were due process issues because there was no formal way for a group like the coalition to appeal the placement of its website on the "unreliable" list.

As to the First Amendment, he said that the university gave "a clear overtone of an academic penalty" for anyone who used the Turkish group's materials. (Those materials continue to dispute the Armenian genocide.) Saltzman said that he considered the "warning to researchers" to be "a poor cousin" to the original list of questionable websites. The university, he said, "is saying 'we're no long defaming by wide broadcast, but we're going to whisper it to you if you call us.' "

Mark Rotenberg, general counsel for the university, said that the list of unreliable websites didn't restrict free speech, and that students were not barred from visiting sites on the list. He also said that the site didn't defame anyone because it was an opinion of faculty members in an academic program. "The department gets to have that opinion," he said.

The lawsuit against Minnesota followed one by Guenter Lewy, a professor emeritus of political science at the University of Massachusetts at Amherst, against the Southern Poverty Law Center. Lewy's lawsuit focused on two statements in a Southern Poverty Law Center document that suggested that he was financially backed in his research by Turkey's government.

That article now features a "retraction and apology" that says in part: "We now realize that we misunderstood Professor Lewy's scholarship, were wrong to assert that he was part of a network financed by the Turkish Government, and were wrong to assume that any scholar who challenges the Armenian genocide narrative necessarily has been financially compromised by the Government of Turkey. We hereby retract the assertion that Professor Lewy was or is on the Government of Turkey's payroll." Reported in: insidehighered.com, December 1.

Davidson, North Carolina

A campus police officer can arrest you just as any cop can—unless the college that employs him is religiously affiliated. That's what judges in North Carolina have held, and what the state's highest court must now affirm or reverse.

The case began with a traffic stop on a street next to Davidson College in 2006. A campus officer arrested Julie Anne Yencer for drunken and reckless driving. She pleaded guilty but asked a state court to dismiss the charges on account of Davidson's affiliation with the Presbyterian Church. The college police officers' powers, she argued, violated the separation of church and state.

"We all know that the exercise of police power is inherently discretionary," says Allen C. Brotherton, a lawyer in Charlotte, who represents Yencer. And Davidson's officers ultimately answer to trustees, 80 percent of whom must be, under the college's bylaws, active members of a Christian church. Whether or not Yencer is guilty, Brotherton says, the state's authority cannot be wielded by a sectarian institution.

A trial court upheld the campus officers' authority, but in August, the state's appellate court rejected it. The judges followed the logic of similar cases involving Campbell and Pfeiffer Universities: that delegating police power to a religious institution constitutes "excessive entanglement" of government and religion. At the same time, the judges took the unusual step of saying in their ruling that they were bound by precedent to reach that result. They urged the state's Supreme Court to review the case.

While the case is pending, that court will allow Davidson to continue employing a police force. The college now has eight officers, and officials there had worried about the capacity of their small town's police to respond immediately in an emergency. "In today's world, with the heightened emphasis on campus security, we think it would be detrimental to the college not to have our own police department," said Thomas W. Ross Sr., president of Davidson, who is a former judge.

Not only Davidson is pursuing that argument. Friend-of-the-court briefs outlining the benefits of campus police departments and dismissing any religious influence have been filed by the North Carolina Independent Colleges and Universities and the state chapters of the International Association of Campus Law-Enforcement Administrators, the Sheriffs' Association, and the International Association of Chiefs of Police.

Campus police forces are best positioned to protect students and staff, those groups say, adding that officers, certified by the state's attorney general, are not authorized to enforce any college code of conduct. Like all police officers in North Carolina, those employed by colleges take oaths that they "will not be influenced in any matter on account of personal bias or prejudice" and will "faithfully and impartially execute" their duties, the groups point out. Also, they say, campus police forces improve safety at no cost to taxpayers.

Similar reasoning has guided legal decisions in other states, including Indiana, in a case involving Valparaiso University, and Michigan, in a case at Hope College. Indiana's appellate court concluded that "the ability of a postsecondary educational institution to create a police force is not dependent upon its status as a secular or sectarian institution." Michigan's appellate court decided: "Although a Hope College officer may be affected to a degree by religious considerations in making discretionary decisions, ultimately the officer, acting in public under appointment as a deputy sheriff, can only enforce the laws of Michigan."

Private colleges, religious or not, can employ commissioned police officers in most states, either by law or agreement with a municipal law-enforcement agency. But in North Carolina, where the sixteen private colleges that maintain police forces all have some kind of religious affiliation, campus officers' authority is vulnerable.

Last November, a Duke University sophomore, Thomas (Alex) Holloway, asked a court to dismiss drunken-driving and underage-drinking charges against him. His request, still pending, cites a reference to Jesus Christ in Duke's bylaws, points out that two-thirds of its trustees must be elected by the United Methodist Church, and notes the university's recent $22-million expansion of its divinity school.

Duke officials said their policies and practices are distinct from those of Davidson, Campbell, and Pfeiffer, all of which require students to take at least one religion class. Duke's police department, with 68 full-time officers, has continued its work. "For us it is business as usual," says Michael Schoenfeld, vice president for public affairs and government relations. "We believe we are in compliance with the law."

The law is North Carolina's Campus Police Act, which the independent-colleges group lobbied for after the decisions involving Campbell and Pfeiffer. Enacted in 2005, the law specifies that the state attorney general can authorize campus-police agencies at private, nonprofit institutions of higher education, including those "originally established by or affiliated with religious denominations." Regarding Davidson, the appeals court found the law, as applied, unconstitutional.

Similar rulings—that campus police at religious institutions violate the establishment clause of the U.S. Constitution—did away with Campbell's and Pfeiffer's departments. Both colleges now hire security guards and contract with local law-enforcement agencies to keep officers on their campuses. Five county officers are permanently assigned to Campbell, in rural Buies Creek, N.C. One of them, Lieutenant Tim Lloyd, serves on several campus committees, including the critical-incident-response team.

At Pfeiffer, in rural Misenheimer, the town's police chief regularly meets with athletic teams and helps train resident assistants. Still, there are some drawbacks to the change, said Bobby Stewart, the university's chief operations officer. "Obviously, having a campus police force, you get 100 percent of the attention, time, and energy," he says. Now, town officers may get called away for an emergency down the road. Negotiating an annual contract is an administrative burden, Stewart added, but Pfeiffer enjoys decreased liability—and insurance costs. Neither Pfeiffer nor Campbell could calculate the financial swing between an institutional and contracted police force.

But Tracey Wyrick, Misenheimer's chief of police, had another measure: fewer accidents and speeding tickets on Highway 52, which bisects the campus. "You can't measure power," he says, "but people tend to obey some laws more than they did before."

Most courts, however, have been giving more respect to campus police officers, said Jeffrey S. Jacobson, a lawyer in New York who works with colleges on police jurisdiction. "In the 1990s, you could count on a decision coming out every few months overturning a campus arrest," he said. Now, with greater professionalization of campus police forces and more attention to campus safety, rulings tend to affirm officers' authority.

Except in North Carolina, for now at least. The state's Supreme Court will hear Yencer's case early next year, and Jacobson expects the court to overturn its precedent and allow religious colleges to employ police officers. Officials at Davidson, Duke, and several other colleges are hoping for that result. Reported in: *Chronicle of Higher Education* online, December 5.

Eugene, Oregon

Eugene's Lane Community College is embroiled in controversy after administrators there canceled a noncredit course on Islam just as concerns about its instructor were made public in December. Now, both sides could be heading for a lawsuit.

The eight-hour "personal enrichment class" entitled "What Is Islam?" was brought to the administration's attention December 2 after an inquiry from a local

television station. The class was to be taught by Barry Sommer, head of the local Eugene/Springfield chapter of Act! for America, whose self-described mission is to "inform, educate and mobilize Americans regarding the multiple threats of radical Islam, and what they can and must do to protect themselves and their country against this determined enemy."

The next day, December 3, administrators canceled the noncredit class before anyone registered for it. (The course was available only on the online course directory for about 48 hours.) But Lane officials did not cite Sommer's background in canceling the course; instead, they pointed to the recently foiled terrorist attack in Portland and the seemingly retaliatory firebombing of a mosque in Corvallis days later.

"Due to the subject matter and in the context of recent events in Portland and Corvallis, administrators conducted an immediate review and concluded that the most reasonable action was to step back and take more time to give additional thought, consideration, and care in how to provide a rich learning experience in consultation with faculty," reads a statement from the administration.

The same day, however, the Washington state chapter of the Council on American-Islamic Relations (CAIR) called on the college to replace Sommer as the teacher of the noncredit course.

"Unless the goal of this course is to promote anti-Muslim bigotry, Lane Community College should replace Sommer with someone who will offer students a balanced and objective analysis of the subject matter," wrote Arsalan Bukhari, the chapter's executive director, in a letter to Mary Spilde, Lane's president.

Sommer said college officials had not told him why they canceled his course. Noting that he received notice of the cancellation after CAIR issued a news release, Sommer added that he felt the college "bowed to pressure from CAIR" and "will always believe that CAIR was, in some way, indirectly involved with [Lane's] canceling the course."

Spilde, however, insisted that her college "did not and will not make instructional decisions in response to pressure from any outside group."

"Lots of people want to have a part in why this decision was made," Spilde said. "Really, the instructor himself was irrelevant to the decision for us, as was the Council on American-Islamic Relations and Act! for America. The flag for us was the treatment of content like this in a highly charged situation because of recent events in Oregon."

The college offers about 350 noncredit, "personal enrichment classes" every semester, and as many as a quarter are canceled because of low enrollment or other reasons. Spilde said the college hopes to have at least 6-8 students in each class. She added that Sommer's course would have cost $55 per student and that Sommer would have received $20 per hour for instruction. (Instructors are paid for courses only if enough students enroll and they are actually taught.) Though she acknowledged that curriculums and instructors in these courses are not held to as high a standard as those offered for credit at the college, she argued that certain subjects and instructors are not meant for this continuing education setting.

"Yes, we believe in free speech," Spilde said. "Everybody has the right to speak, but not everybody has the right to teach. Anybody can go out and talk to whoever wants to listen. We can't stop that, and we don't want to stop that. But, who teaches in a Lane Community College classroom and in terms of treatment of content, we do have control over that. We do have the right to make decisions like that."

Sommer, however, countered that no one from the college or news media covering this incident made the effort to figure out what his course was all about. He said that his course was meant to be a "historically and factually accurate history of Islam." Though Sommer, 56, is unemployed and has only a high school diploma, he said he felt he was more than qualified to teach the course because of "twenty years of serious research and study."

"There's no hidden agenda or anything untoward about any of this," Sommer said of his course. "I don't care what people say.… I wasn't raised as a bigot or a racist or have Islamophobia."

With Sommer's blessing, the American Center for Law and Justice, a group based in Washington, D.C., is threatening to sue the college if it does not reinstate Sommer to teach the course by December 15.

"Canceling Mr. Sommer's course due to CAIR's complaint conflicts with the longstanding tradition at public colleges, commanded by the First Amendment, of protecting academic freedom in order to prevent an orthodoxy—often fueled by the political correctness of the day—from being imposed upon college instructors and students," CeCe Heil, senior counsel at the group, said in a letter to Spilde. "LCC should right this wrong by reinstating the course and allowing interested students to register and draw their own conclusions."

Faculty at the college offered mixed opinions on the controversy. Cliff Trolin, a part-time religious studies professor who has been at the college for 21 years, believes the administration did the right thing in canceling the course.

"We need balance and clarity when we're dealing with Islam," said Trolin, who teaches a for-credit course on the religions of the Middle East. "Well, we need it with all subjects, but we really need it with Islam. … This class didn't seem to be offering that. ... The idea of teaching a hot-button issue in a continuing education course is probably not the best way to go. We need to move it into the for-credit side."

In the spring, Trolin and a few other faculty members from the religious studies program plan to organize academic colloquiums and a seminar series "aimed at providing conceptual clarity, answering questions, and addressing issues" regarding Islam, Sonya Christian, Lane's chief academic officer, said at a board meeting last week.

Even though he will help organize these springtime events, Jeffrey Borrowdale, a full-time and tenured professor of philosophy and religion, has a different take. "I believe that as a public institution we have a responsibility not to engage in viewpoint censorship, even if the motive is sensitivity and tolerance. I would have let the class go and then done the sorts of things we're discussing next term: panels and colloquia on Islam, visiting scholars and a new credit course in the spring, and so on," Borrowdale said. "The solution to bad speech—if it is bad speech—is not to silence it, but to challenge it with better speech." Borrowdale also said the college should have engaged Sommer, rather than distancing itself from him.

"Instead, people relied on hearsay, material on the website of a group he's associated with and material on his blog," Borrowdale explained. "No one ever called or talked to him or asked him how he planned on approaching the course. … The academy has a responsibility toward the dispassionate and impartial search for truth, and sometimes truth can ruffle the feathers of various groups. We want to make sure we don't paint with too broad a brush when speaking about some of the troubling aspects of Islam, but we don't want to whitewash those aspects either." Reported in: insidehighered.com, December 14.

State College, Pennsylvania

In debates over academic freedom, one point of contention has been the inclusion of controversial material that may not be directly related to the subject matter of a given course—or at least that may not be related in a way that would be flagged on the syllabus. Faculty leaders at Pennsylvania State University—one of the largest institutions in the country—are moving to bolster the latitude of professors to engage in discussion of such material. The Faculty Senate in December adopted a policy (which now goes to the university president) that would remove unusually strict limits on such discussions.

The language proposed for removal states: "No faculty member may claim as a right the privilege of discussing in the classroom controversial topics outside his/her own field of study. The faculty member is normally bound not to take advantage of his/her position by introducing into the classroom provocative discussions of irrelevant subjects not within the field of his/her study." Further, the proposed changes would remove an obligation to present all information in a way consistent with a "judicial mind."

The Faculty Senate proposal keeps other provisions, however, that are designed to assure that a course on chemistry doesn't become one on contemporary politics. Faculty members would still be "responsible for the maintenance of appropriate standards of scholarship and teaching ability, and for not persistently intruding material which has no relation to their subjects."

And while the "judicial" phrase—seen by some as limiting the ability to express opinions on one side or the other of a debate—would be removed, other requirements remain. Faculty members are encouraged to educate students "to form their own opinions," and to "present information fairly."

The revisions make other changes as well, noting explicitly the need for academic freedom in discussion of governance issues, for online instruction and for librarians. But in terms of policy changes, the shifts on classroom conduct may be the most significant. While faculty members debated precise language in the policy at length, there were no substantive disagreements on making the changes.

Those who track academic freedom nationally said that the changes were overdue. Cary Nelson, national president of the American Association of University Professors, said that "Penn State had one of the most restrictive and troubling policies limiting intellectual freedom in the classroom that I know of. It undermined the normal human capacity to make comparisons and contrasts between different fields and between different cultures and historical periods. The revised policy is a vast improvement."

The blog College Freedom called some of the provisions proposed for removal "absolutely appalling attacks on academic freedom," and said that the new language was "dramatically improved."

In 2006, Pennsylvania's public colleges and universities were the subject of intense scrutiny from David Horowitz and other critics of academe over class content, among other subjects. (The current version of the policy was last revised in 1994, well before the scrutiny.) But these changes at Penn State have been discussed with little fanfare or controversy. The student newspaper relegated the issue to two paragraphs in an article about the Faculty Senate meeting—focusing instead on the Senate's discussion of alcohol issues at the campus.

Jean Landa Pytel, chair of the Faculty Senate and associate professor of engineering science and mechanics, said that there was no incident or debate that led to the idea of changing the policy—only a sense that "professors need to be given sufficient flexibility to do a good job in the classroom." Further, she said that the proposed changes reflect that "we're teaching critical thinking" and that sharing faculty perspectives can advance that goal.

Pytel stressed that she didn't see the changes as leading to faculty members suddenly opining about politics every day (at least in classes about issues other than politics). "I don't know of anyone wanting to use the classroom as a platform like that," she said. And Pytel stressed that someone who did might be violating the policy as the faculty members want to amend it. "We have a lot of students here. If anyone engaged in that behavior, we would hear about it." insidehighered.com, December 14.

government surveillance

Washington, D.C.

The federal government has repeatedly violated legal limits governing the surveillance of U.S. citizens, according to previously secret internal documents obtained through a court battle by the American Civil Liberties Union.

In releasing 900 pages of documents, U.S. government agencies refused to say how many Americans' telephone, e-mail or other communications have been intercepted under the Foreign Intelligence Surveillance Act—or FISA—Amendments Act of 2008, or to discuss any specific abuses, the ACLU said. Most of the documents were heavily redacted.

However, semiannual internal oversight reports by the offices of the attorney general and director of national intelligence identify ongoing breaches of legal requirements that limit when Americans are targeted and minimize the amount of data collected.

The documents note that although oversight teams did not find evidence of "intentional or willful attempts to violate or circumvent the law …certain types of compliance incidents continue to occur," as a March 2009 report stated.

The unredacted portions of the reports refer only elliptically to what those actions were, but the March 2009 report stated that "information collected as a result of these incidents has been or is being purged from data repositories."

All three reports released so far note that the number of violations "remains small, particularly when compared with the total amount of activity." However, as some variously put it, "each [incident]—individually or collectively—may be indicative of patterns, trends, or underlying causes, that might have broader implications." and underscore "the need for continued focus on measures to address underlying causes." The most recent report was issued in May.

In a statement issued December 2, the ACLU said that violations of the FISA Amendments Act's "targeting and minimization procedures …likely means that citizens and residents' communications were either being improperly collected or 'targeted' or improperly retained and disseminated." The ACLU has posted the documents on its Web site.

A spokesman for Attorney General Eric H. Holder Jr., Dean Boyd, said the new law "put in place unprecedented oversight measures, reporting requirements and safeguards to protect privacy and civil liberties," and that the reports cited by the ACLU were the product of "rigorous oversight" by the Justice Department and intelligence community. "In short, foreign intelligence surveillance is today carefully regulated by a combination of legislative, judicial, and executive-branch checks and balances designed to ensure strong and scrupulous protection of both national security and civil liberties," Boyd's e-mail said.

Melissa Goodman, staff attorney with the ACLU National Security Project, said, "It is imperative that there be more public disclosure about the FAA [FISA Amendments Act] violations described in these documents …as Congress begins to debate whether the FAA should expire or be amended in advance of its 2012 sunset."

Congress passed FISA in 1978 to prevent Americans' communications from being tapped without a warrant. Lawmakers amended the law in 2008 to broaden and clarify legal authorities after the September 11, 2001, terrorist attacks and advances in Internet communications prompted fresh concerns over expanded surveillance powers.

The ACLU, human rights activists and other parties sued, charging that the new law violates the Fourth Amendment's prohibition of unreasonable searches. A U.S. district judge tossed out the case, which remains on appeal, and the ACLU has pursued a related Freedom of Information Act request. Reported in: *Washington Post*, December 3.

USA PATRIOT Act

Washington, D.C.

Sen. Patrick Leahy (D-VT) introduced a reauthorization of the USA PATRIOT Act January 26 that would extend and reform some provisions set to expire on February 28. Leahy's reforms, known as the USA PATRIOT Act Sunset Extension Act of 2011, would limit the government's power in gathering intelligence on individuals in the United States.

But many civil rights groups, including the American Civil Liberties Union (ACLU), the American Library Association (ALA) and the Campaign for Reader Privacy say the reforms do not go far enough to reduce the USA PATRIOT Act's impact, which the ACLU calls unconstitutional.

"While this bill makes important changes to the USA PATRIOT Act to increase oversight of its powers, it unfortunately allows many dangerous provisions to continue," said Michelle Richardson, ACLU legislative counsel. "Since its passage nearly a decade ago, the USA PATRIOT Act has been used improperly again and again by law enforcement to invade Americans' privacy and violate their constitutional rights."

The bill targets Section 215 of the USA PATRIOT Act, known as the "library provision," by limiting the Federal Bureau of Investigation's (FBI) ability to track library records of United States residents.

The USA PATRIOT Act's current legislation allows the FBI to obtain any library records that are "presumptively relevant" to a terrorist investigation, including those of people who are not suspects; Leahy's bill would require the FBI to show a "statement of the facts and circumstances" before being able to obtain private records.

Similar restrictions that mandate evidence and transparency would also apply to government bodies seeking Pen Registers and Trap and Trace Devices (PR/TT) for foreign intelligence purposes and access to phone records. The extensions would last until December 2013.

In 2009. Leahy introduced legislation to reauthorize expiring provisions of the act. A bipartisan majority of the Judiciary Committee approved the legislation in October of that year, but the legislation was stalled on the floor. In March 2010, the Senate passed a temporary one-year extension of expiring provisions of the USA PATRIOT Act.

"Congress now faces a deadline to take action on the expiring provisions of the USA PATRIOT Act," said Leahy. His bill would, according to Leahy, "promote transparency and expand privacy and civil liberties safeguards in current law. It increases judicial oversight of government surveillance powers that capture information on Americans."

The ALA and the Campaign for Reader Privacy both noted that the Section 215 revisions extend only to libraries and do not protect bookstore records.

"We appreciate the heightened protection afforded library records for those Americans who borrow books," said Barbara Jones, director of the ALA Office for Intellectual Freedom. "The next logical step would be to safeguard the First Amendment rights of Americans who purchase books in a bookstore. In both instances, reader privacy must be maintained."

The Campaign for Reader Privacy pointed to Attorney General Eric Holder's recent approval of certain provisions in Leahy's 2009 reauthorization bill, which would protect both library and bookstore records. "Taken together, I believe these measures will advance the goals of ... enhancing the privacy and civil liberties our citizens enjoy without compromising our ability to keep our nation safe and secure," Holder wrote to Leahy.

On December 9, Holder sent Leahy a letter in which he agreed to implement an array of policies designed to check abuse of USA PATRIOT Act powers. These include more thorough record keeping and more disclosures to Congress, prompt notification of telecommunications companies when gag orders have expired, and updated retention and dissemination procedures to govern the vast quantities of information obtained using National Security Letters. Many of the milder reforms proposed during the last reauthorization debate appear to have been voluntarily adopted by Holder.

Referring to Leahy's previous attempt to reform the act, Holder wrote: "[W]e have determined that many of the privacy and civil liberties provisions of S.1692 can be implemented without legislation. We believe these measures will enhance standards, oversight, and accountability, especially with respect to how information about U.S. persons is retained and disseminated, without sacrificing the operational effectiveness and flexibility needed to protect our citizens from terrorism and facilitate the collection of vital foreign intelligence and counterintelligence information."

In its response to Leahy, the Justice Department indicated that it has:

- Implemented a requirement that, when library or bookseller records are sought via a Section 215 order for business records, a statement of specific and articulable facts showing relevance to an authorized investigation must be produced;
- Adopted a policy requiring the FBI to retain a statement of facts showing that the information sought through a National Security Letter (NSL) is relevant to an authorized investigation, to facilitate better auditing and accountability;
- Adopted procedures to provide notification to recipients of NSLs of their opportunity to contest any nondisclosure requirement attached to the NSL;
- Agreed to ensure that NSL recipients who challenge nondisclosure orders are notified by the FBI when compliance with such nondisclosure orders are no longer required;
- Adopted Procedures for the Collection, Use and Storage of Information Derived from National Security Letters, which were approved by Attorney General Holder on October 1, 2010;
- Agreed to work with Congress to determine ways to make additional information publicly available regarding the use of FISA authorities.

"I am pleased that the Justice Department is implementing many of the important oversight provisions of the USA PATRIOT Act Sunset Extension Act," said Leahy. "I take seriously the Senate's role in conducting oversight. We must remain vigilant to ensure that law enforcement has the necessary tools to protect our national security, without compromising the personal privacy of Americans. I still believe that these important oversight and accountability provisions should be enacted in law, but I appreciate that by implementing key measures in the bill, the Department of Justice has embraced the need for oversight and transparency. I look forward to working with Attorney General Holder to improve and strengthen the privacy protections and tools authorized in the PATRIOT Act."

But Leahy also stressed the importance of placing the most recent provisions into law rather than administrative action. "The reforms adopted by this Attorney General could be undone by a future Attorney General with the stroke of a pen," Leahy said while introducing his bill. "We must ensure that the progress in accountability and transparency that we achieved last year is not lost simply because it was never written into the statute."

Congress passed a one-year extension of the expiring PATRIOT Act provisions in February 2010, but did not make any changes to the bill, despite proposed legislation pending approval in the House and Senate at the time.

In its report, "Reclaiming Patriotism," the ACLU outlined three PATRIOT Act provisions that the organization says need reform. In addition to Section 215, the ACLU also named Section 206, the "roving John Doe wiretap," which permits the government to secure wiretapping orders without disclosing the identities of its targets; and Section 6001, the "lone wolf" provision, which allows the government to spy on non-US

citizens, including those who are not affiliated with foreign groups, as the provisions that need immediate reform.

"The three expiring provisions of the PATRIOT Act give the government sweeping authority to spy on individuals inside the United States, and in some cases, without any suspicion of wrongdoing," the ACLU stated in its report. "All three should be allowed to expire if they are not amended to include privacy protections to protect personal information from government overreach."

In addition to Leahy, one Democrat and one Republican have each introduced a bill to address the issue. The bills conflict on how long to extend the authorities and how much oversight to include.

Leahy was hoping his Judiciary Committee could mark up his bill on February 3. But new Judiciary ranking member Chuck Grassley (R-IA) introduced a bill that would permanently extend the act's authorities. Grassley, along with Senate Majority Leader Mitch McConnell (R-KY), said temporary extensions and the threat of oversight would hinder U.S. intelligence agents.

"The threat of terrorism isn't going away so we must provide our agents with the tools they need to get the job done," Grassley said. "Given that terrorist threats, including those from self-radicalized individuals, continue to evolve, we must ensure that our law enforcement agents are not burdened with new restrictions on existing authorities."

Leahy charged Republicans with politicizing the issue. "We should not play politics with national security," he said, adding that he has been conducting "aggressive oversight" of USA PATRIOT Act surveillance authorities since the original bill was passed in 2001.

But Leahy also faces a challenge from within his own party. Sen. Dianne Feinstein (D-CA) introduced her own bill that would extend the surveillance authorities until 2013, but would do so without the additional oversight language that Leahy prefers. Feinstein indicated that there may not be enough time to consider Leahy's reforms.

All three bills have been introduced consecutively: Feinstein's is S. 289, Leahy's is S. 290, and Grassley's is S. 291. Senate Majority Leader Harry Reid (D-NV) on February 4 objected to the second reading of these bills on the Senate floor, which put them aside and allows for more time to decide how to proceed. Reported in: truth-out.org, February 3; *The Hill*, February 4; Sen. Leahy Press Release, December 9; cato-at-liberty.org, December 13.

FBI

Washington, D.C.

In a review of nearly 2,500 pages of documents released by the Federal Bureau of Investigation as a result of litigation under the Freedom of Information Act, the Electronic Frontier Foundation (EFF) uncovered alarming trends in the Bureau's intelligence investigation practices.

The documents consist of reports made by the FBI to the Intelligence Oversight Board (IOB) of violations committed during intelligence investigations from 2001 to 2008. The documents suggest that FBI intelligence investigations have compromised the civil liberties of American citizens far more frequently, and to a greater extent, than was previously assumed.

In particular, EFF's analysis provides new insight into the number of violations committed by the FBI:

- From 2001 to 2008, the FBI reported to the IOB approximately 800 violations of laws, Executive Orders, or other regulations governing intelligence investigations, although this number likely significantly under-represents the number of violations that actually occurred.
- From 2001 to 2008, the FBI investigated, at minimum, 7000 potential violations of laws, Executive Orders, or other regulations governing intelligence investigations.
- Based on the proportion of violations reported to the IOB and the FBI's own statements regarding the number of NSL violations that occurred, the actual number of possible violations that may have occurred in the nine years since 9/11 could approach 40,000 violations of law, Executive Order, or other regulations governing intelligence investigations. This figure is an estimate based, first, on the fact that a significant number of FBI violations went unreported, both internally and to the IOB; second, this estimate assumes the sample of violations reported to the IOB and released to EFF is representative of all violations that occurred, including those that went unreported; third, the estimate assumes violations occurred at the same rate over time. In the reports released to EFF, roughly 33% were violations of the NSIG, 33% were NSL violations, and 20% were other violations. The estimate is based on an extrapolation from the OIG's estimate that 6,400 NSL violations occurred from 2003-2006.

EFF also reported substantial delays in the intelligence oversight process. From 2001 to 2008, both FBI and IOB oversight of intelligence activities was delayed and likely ineffectual; on average, 2.5 years elapsed between a violation's occurrence and its eventual reporting to the IOB.

With respect to the type and frequency of FBI Intelligence violations the EFF report found that:

- From 2001 to 2008, of the nearly 800 violations reported to the IOB, over one-third involved FBI violation of rules governing internal oversight of intelligence investigations; nearly one-third involved FBI abuse, misuse, or careless use of the Bureau's National Security Letter authority; and

almost one-fifth involved an FBI violation of the Constitution, the Foreign Intelligence Surveillance Act, or other laws governing criminal investigations or intelligence gathering activities.

- From 2001 to 2008, in nearly half of all NSL violations, third-parties to whom NSLs were issued—phone companies, internet service providers, financial institutions, and credit agencies – contributed in some way to the FBI's unauthorized receipt of personal information.
- From 2001 to 2008, the FBI engaged in a number of flagrant legal violations, including: submitting false or inaccurate declarations to courts; using improper evidence to obtain federal grand jury subpoenas; and accessing password protected documents without a warrant. Reported in: Electronic Frontier Foundation, *Patterns of Misconduct: FBI Intelligence Violations From 2000-2008*, January 2011.

privacy

Washington, D.C.

Signaling a sea change in the debate over Internet privacy, the U.S. government's top consumer protection agency on December 1 advocated a plan that would let consumers choose whether they want their Internet browsing and buying habits monitored.

Saying that online companies have failed to protect the privacy of Internet users, the Federal Trade Commission (FTC) recommended a broad framework for commercial use of Web consumer data, including a simple and universal "do not track" mechanism that would essentially give consumers the type of control they gained over marketers with the national "do not call" registry.

Those measures, if widely used, could directly affect the billions of dollars in business done by online advertising companies and by technology giants like Google that collect highly focused information about consumers that can be used to deliver personalized advertising to them.

While the report was critical of many current industry practices, the commission will probably need the help of Congress to enact some of its recommendations. For now, the trade commission hopes to adopt an approach that it calls "privacy by design," where companies are required to build protections into their everyday business practices.

"Despite some good actors, self-regulation of privacy has not worked adequately and is not working adequately for American consumers," Jon Leibowitz, the chair of the trade commission, said. "We'd like to see companies work a lot faster to make consumer choice easier."

Many of the problems the FTC is trying to tackle involve third parties that use technology to surreptitiously follow a user around the Web, collecting data and then selling it, usually without the user's knowledge. "Our main concern," Leibowitz said, "is the sites and services that are connecting the dots between different times and places that a consumer is online and building a profile of what a consumer is doing."

The recommendations, which were contained in a 79-page report, were cautiously received by browser makers including Google, Mozilla and Microsoft, who said they would examine the report and provide feedback to the commission.

Mike Zaneis, the senior vice president and general counsel of the Interactive Advertising Bureau, said the industry generally supported the concepts proposed but opposed some of the strict measures preferred by consumer advocates. The online advertising industry, Zaneis said, would suffer "significant economic harm" if the government controlled the do-not-track mechanism and there was "a high participation rate similar to that of do not call." Zaneis said the industry would continue to build upon a self-regulatory framework and had recently put in place the use of icons on select online advertisements that allow users to opt out of customized advertising.

"If your goal is to have a red flashing icon that says, 'Click here to opt out of targeting,' and to incentivize people to opt out, then we don't share that goal," Zaneis said.

Currently, millions of Internet users who want to opt out of behavioral tracking have to navigate their browser privacy controls, download plug-ins or opt out by clicking on an icon near an ad that is part of the industry self-regulatory program. The report recommends that companies adopt simpler, more transparent and streamlined ways of presenting consumers with their options rather than the "long, incomprehensible privacy policies that consumers typically do not read, let alone understand." And the report recommends that data brokers give consumers "reasonable access" to any data they have collected.

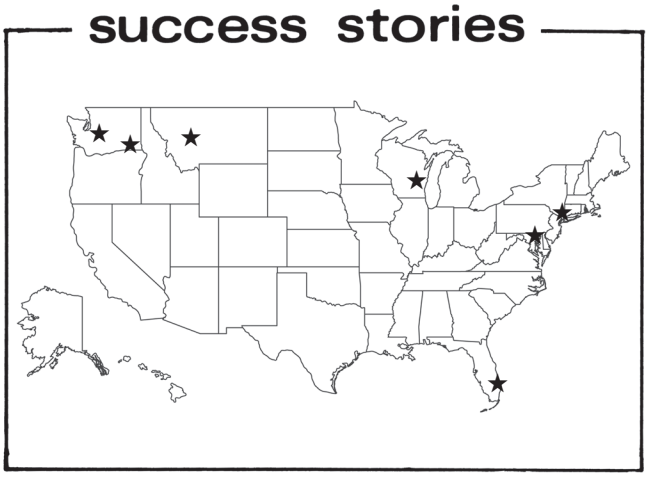
Leibowitz said the commission's report was not a call for legislation but a guide to lawmakers and regulators. "Most of us on the commission believe it is time for a 'do not track' mechanism," Leibowitz said. But at least one commissioner refused to support the issuance of a report that included requiring the mechanism.

In addition, David C. Vladeck, director of the commission's consumer protection bureau, said at a conference sponsored by Consumer Watchdog, "I do not think that under the FTC's existing authority we could mandate unilaterally a system of 'do not track.' "

The report asks for the public and industry to comment on its recommendations and to make other suggestions over the next two months. Lawmakers examining the recommendation for a "do not track" mechanism said they supported stricter safeguards for consumer privacy, but raised questions on how the system would work. Many also expressed concern that it would undermine one of the main pillars of the

(continued on page 81)

success stories



schools

Stuart, Florida

Foul-mouthed and sarcastic as he may be, Holden Caulfield is not getting booted from South Fork High School.

The Catcher in the Rye, J.D. Salinger's provocative and sometimes crass novel about Caulfield, will remain on the school's reading list—despite protests from the mother of an eleventh-grader there.

The parent, Jo Anne Connolly of Stuart, went public with her concerns in September. She didn't like Salinger's language, particularly his use of "the 'F' word" and frequent instances where the author "takes the Lord's name in vain," she said.

In October, the mother of five appealed to the Martin County School District, making a formal request to ban the book from the entire school district. A committee that included a high school teacher, an assistant principal, a librarian, two school district officials and two community members issued their decision in November.

They examined the plot and characters. They read a South Fork English teacher's lesson plan for the book. They talked about whether high school students still can relate to the characters. Ultimately, they decided the controversial language was outweighed by the salient points that Salinger makes. Even use of the 'F' word was justified, they agreed, because it was in context. When Caulfield sees the word scrawled on a wall, he is repulsed. He wants to conceal it from his younger sister.

"It wasn't him saying it. It was him getting angry over it," said Jennifer Salas, the Martin County Library System's youth services coordinator.

The committee decided the book "is appropriate for students at South Fork High School," and the district as a whole. For parents who disagree with it, the committee respected their rights to choose alternative books for their children. Connolly did. Instead of *The Catcher in the Rye*, her son read Mark Twain's *The Adventures of Huckleberry Finn*. Reported in: TCPalm.com, January 15.

Helena, Montana

The Helena School District superintendent has upheld a review committee's recommendation to retain *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie. The committee voted unanimously to continue using the book as a resource option to support the high school English curriculum after a Helena mother asked for it to be removed and a public hearing was held on the issue.

Michele Smith, the parent who requested the book be removed from the curriculum, said she won't appeal the decision. "I'm disappointed, but not surprised," she said. "I decided not to appeal because it wouldn't change anything. They seem pretty set with their decision and nothing more I could do or say would change that."

Smith filed the request in October to remove the book which she feels has obscene, vulgar and pornographic language. "Whatever purpose the author is attempting to accomplish is completely negated by the many objectionable parts scattered throughout this entire book," she wrote in her request.

Smith argued that the book damages young people by perpetuating filth, and was one of only four individuals who testified in support of removing the book at the public hearing held in December. Another thirty-three urged the school to keep the book and more than a hundred people attended.

Alexie's *True Diary* is written from a teenage boy's perspective of growing up in a challenging environment on the Spokane Indian Reservation and about looking beyond adolescent awkwardness and finding the courage to strive for a better life. The lead character, Arnold "Junior" Spirit, leaves the poverty-stricken reservation school to attend an all-white school more than twenty miles away in hopes to getting a better education. He is shunned by his tribe, abandoned by his best friend, and describes the trials of living with an alcoholic father.

The book is a *New York Times* bestseller, won the National Book Award in 2007 in the "Young People's Literature" section, and is on many recommended book lists.

Parts of the book touch on sensitive subjects, such as a teenage boy's sexual arousals, death and racism—topics that have caused controversy in Helena and in other communities. In 2008, Crook County High School in Prineville, Oregon, removed the book from a freshman English class after a father challenged it with the school board. However, Alexie's book is used across the country in hundreds of classrooms without being challenged.

The committee's decision to keep the book was based on five points. First the resource option meets the mandated state standards for the integration of Indian Education for All. Second, board policy says a book will not be excluded because of race, nationality, political or religious values of the writer or of the material's style and language. Third, board policy says books are chosen for value of interest and enlightenment of all students in the community. The committee wrote that the many students who testified spoke of the positive impact the book had on them. Fourth, the option for alternative curricular assignment was offered; and fifth, the book is highly recommended by recognized review authorities and received many national literary awards. Reported in: *Helena Independent-Record*, February 3.

Richland, Washington

A novel containing language and descriptions some parents found objectionable will continue to be taught in college-level classes at Richland high schools after the school board denied a parent's appeal February 2.

The novel—*Snow Falling on Cedars*, by Washington writer David Guterson—is one of several books students can choose to read in an Advanced Placement English language and composition class at Hanford High School. The book was selected for the curriculum twelve years ago because it deals with prejudice against Japanese-Americans in the Pacific Northwest during and shortly after World War II, teachers said.

Calvin Manning, a West Richland parent of a junior in the district, filed a complaint about the book in November, requesting it be removed from the curriculum due to passages he called "lewd, vulgar and profane." Manning's daughter is not in the class in which the book can be used. He is a member of a group of parents who monitor literature used in Richland schools.

The complaint was rejected first by the principal, then by the district's instructional materials committee and finally by Superintendent Jim Busey. The February 2 board meeting was the final level of appeal for Manning.

All but one of the board members voted to deny Manning's appeal and to keep the novel on the list of optional materials for the Hanford class. Board member Phyllis Strickler was the lone vote in favor of Manning's appeal.

In its decision, the board grappled not only with balancing the merits and drawbacks of this one novel, but also the guidelines for selecting literature for students in general.

In his opening comments to the board, Manning had lamented the fact that no set criteria exist for book selection that easily could be reproduced by future school boards. Strickler offered some criteria.

"What could be printed in a newspaper could be a standard for the (instruction material committee)," she said. "Another standard—if we opened up some of the passages and read them out loud, I think there'd be many of you who'd be offended. This is indicative of a community standard we need to uphold."

Board member Rick Donahoe said he read passages in the book he found "unnecessary." But he said his standard was whether the book relates to the district's mission of turning students into critical thinkers who can be successful in the global community.

"I want the district to expose my kids to things they're not comfortable with, things they could run into outside of Richland," Donahoe said. "*Snow Falling on Cedars* does that."

Strickler countered that "there are other excellent books that do that, which are free of this objectionable content." Placing a novel on the curriculum means the district endorses it and considers it a preferred book, Strickler said. But, "the objectionable parts disqualify (this novel) for the Richland School District," she said.

The presence of swear words doesn't disqualify the book, said board President Richard Jansons, and neither do the descriptions of sexual acts. "We need to expose kids to social issues in a safe place," he said, adding that he trusted teachers to guide students through the passages in question.

Not having the book—sections of which are referenced in the national Advanced Placement test—in Richland schools would be a disservice to students, he said.

"My rights as a parent with my five kids are being taken away by taking away a book that's on a national test," Jansons said. Reported in: *TriCity Herald*, February 3.

Seattle, Washington

Brave New World, the classic dystopian novel by Aldous Huxley, will remain on the list of approved materials Seattle high school teachers may use in their language arts curriculum. The Seattle School Board December 8 vote to continue allowing its schools to use the book was unanimous.

"I am opposed to banning of any book," said Harium Martin-Morris. "If we go down that road, it is a road that is a dangerous one. Do we now say we won't do *Huckleberry Finn* because of its portrayal of African Americans. Do we get rid of *Native Son*? The list goes on and on."

He called these books an "opportunity to talk candidly with our students—our very capable and knowledgeable and quite frankly very savvy high school students—about these topics."

Nathan Hale High School parent Sarah Sense-Wilson objected to the book her daughter had to read for one of her tenth grade classes. "I was outraged when I read through the book. I had to keep putting it down because it was so hurtful," Sense-Wilson said. "It was traumatizing to read how Indian people were being depicted."

The text has a "high volume of racially offensive derogatory language and misinformation on Native Americans. In addition to the inaccurate imagery, and stereotype views,

the text lacks literary value which is relevant to today's contemporary multicultural society," she said.

Nathan Hale responded to her concerns by removing the book from its curriculum. Sense-Wilson then wanted all Seattle Schools to pull the book from their instructional options.

Board Director Betty Patu said the majority of emails she received from parents indicated they do not want the district to remove the book, but to make sure that if kids read the book "there is some kind of education that goes with it."

Another board member, Peter Maier, said he re-read the book recently and it is clearly satirical. He supported making the Aldous Huxley novel available as a high school text.

Set in the year 2540, *Brave New World* depicts a world in which everyone's life is predetermined. Boys and girls are conditioned at birth to fulfill already designated societal roles. As a result, everyone grows up happy. Or, almost everyone. The conflict in the novel arises when a few people try to fight the system that's running and ruining their lives.

While the book is the center of a new controversy in Seattle, the debate about the fictional story has gone on for decades. The American Library Association ranks *Brave New World* as number 36 on the list of the top 100 books people have either banned or tried to ban. Objections are generally because of drug or sexual references, rather than being a slam against Native Americans.

"I don't believe that censorship is the right answer," said Steve Sundquist, board vice president. "If a teacher wants to teach this text, clearly I want it done in a culturally sensitive and appropriate way."

Board members apologized that the Nathan Hale parent and student thought the book was taught in an "insensitive" way.

Sense-Wilson was in the audience at the Seattle School Board meeting when directors voted to approve the book's continued use. Board President Michael DeBell opined Sense-Wilson was "brave" to challenge the book.

"In the heart of a very liberal city like Seattle it is not necessarily an easy task," he said. "This lesson Ms. Sense-Wilson has offered to the community is that we have to be thoughtful. Our teachers have to be very thoughtful in the use of these kinds of materials." Reported in: mynorthwest.com, December 9.

Belleville, Wisconsin

The Belleville School Board decided January 24 to keep a book that's required reading for high school freshmen in the curriculum despite a parent's complaint. All seven members of the board decided the novel *Staying Fat for Sarah Byrnes*, by Chris Crutcher, will continue to be required reading for ninth-grade students at Belleville High School.

Several months earlier, parent Lori Beil complained that the book was "pornography" and its language was "pervasively vulgar."

The novel was published in 1993, and it has been read by ninth-grade students at Belleville High School for eight years. The book deals topics of abortion, sexuality and the power of religion.

"The premise of the book is really built around this idea of bullying and that the main character, Sarah, is subject to a lot of rejection," said Randy Freese, Belleville School District superintendent.

Beil voiced her concerns before the Belleville School Board in a pre-recorded message. "I believe it would be better for the school to choose books without sex and profanity, that don't bash someone's religion. There are more noble and aspiring choices. Why am I doing this? I'm motivated by love. Love for my son, love for God and love for you, the people of my town," Beil said in her message.

Beil said a book that discusses abortion and bashes religion has no place as required reading. "This book normalizes what God calls sin. Without Christ, sin leads people to hell," Beil said. Beil said that simply opting for her son to complete an alternate assignment isn't a fair compromise.

"No child should need to leave a classroom because a book has too much offensive content when there are so many excellent books to choose from," Beil said.

Most of the parents and students who turned out, many wearing green stickers in support of the book, said that Sarah's story has done exactly what it should. "I think our teens today face so many issues that a lot of us adults cannot even wrap our heads around. I think it's really important that they're exposed," said parent Teresa McMahan.

"The book *Staying Fat for Sarah Byrnes* has not only been a high-quality read but has sent positive messages to me, and I would say, without hesitation, to most of my class," said Taylor Forman, a Belleville High School freshman.

A few other people challenged the book's use in the classroom along similar terms to Beil's argument.

After thoroughly reviewing the book, school district staff supported its use to the school board. "The author does a nice job of trying to present a balanced view on a variety of issues, and again, I think that is the intent of literature, to get people to think about sides, to think in a different way," said Freese.

Beil said that she doesn't want the book taken out of school. She said it could still be available in the library but she just doesn't believe it should be required reading.

The superintendent said this was the first time in his 12 years someone has contested a book in the curriculum. Reported in: Channel3000.com, January 25.

colleges and universities

Annapolis, Maryland

A U.S. Naval Academy professor has settled a First Amendment claim against the service academy, following allegations he was denied a merit pay increase after

he published newspaper articles criticizing school policies. Both parties voiced "mutual satisfaction" with the settlement terms, which were not disclosed by the U.S. Office of Special Counsel in announcing the settlement January 26.

The federal agency's investigation "uncovered evidence indicating that USNA illegally denied the employee a merit pay increase because of his public statements," according to the release.

Professor Bruce Fleming, a frequent thorn in the side of the academy, published an article in the *Annapolis Capital* in June 2009 arguing that the academy's admissions policies gave minority applicants an unfair advantage. The *Washington Post* covered the story a short time later.

Fleming, a tenured English professor, said in the June 14 opinion piece that the academy operates a two-tiered admission system that makes it substantially easier for minority applicants to get in. Academy leaders strenuously denied Fleming's assertion. Fleming served on the academy's admissions board several years ago.

Three months later, Fleming "learned that he was being denied a merit pay increase that year although his immediate supervisor had recommended him for one," according to the release. "When asked to explain the decision, one official told members of the USNA faculty that the employee should not be rewarded for the manner in which he had expressed his concerns outside USNA. A few months later, the employee was also issued a warning letter informing him that if he continued making inappropriate public statements, disciplinary action could be taken against him."

The academy agreed to the settlement without admitting fault.

The federal release quoted Associate Special Counsel William E. Reukauf as saying that "no federal employee should fear that he will be penalized on the job for expressing an opinion on controversial matters of public concern."

Academy spokesman Cmdr. Joe Carpenter issued this statement: "The Naval Academy subscribes to and continues to support the academic freedoms afforded faculty under the provisions of the American Association of University Professors guidelines." Reported in: *Washington Post*, January 26.

Brooklyn, New York

In the face of protests from scholars who accused it of trampling academic freedom, the administration at City University of New York's Brooklyn College abandoned a decision January 31 to block the hiring of an instructor whose work has offended some advocates of Israel.

Karen L. Gould, the college's president, and William A. Tramontano, its provost and vice president for academic affairs, signed off on the hiring of the instructor, Kristofer Petersen-Overton, soon after a unanimous vote by the political-science department to give him the job teaching a course on Middle Eastern politics.

The move came after days of mounting criticism of a decision the previous week by Tramontano to rescind the college's previous offer to hire Petersen-Overton, a doctoral student, to teach the class.

In explaining their earlier decision to rescind the job offer, officials of the college had argued that the hiring decision had not gone through proper channels and that, as a fourth-semester graduate student, Petersen-Overton was unqualified to teach the master's-level class.

Petersen-Overton, however, accused the college of caving in to opposition to the appointment from people who viewed his work as slanted against Israel. And the leadership of CUNY's faculty union, the Professional Staff Congress, issued a statement that accused the college of bowing to political interference and argued that CUNY routinely hires doctoral students to teach courses at the same level as the one Petersen-Overton had been asked to teach.

As of January 31, more than 1,700 people were listed as having signed an online petition that denounced the college's decision not to hire Petersen-Overton as "a clear violation of academic freedom."

Petersen-Overton and many of his supporters pointed out that the provost's decision to rescind the job offer had come hours after Dov Hikind, a Democratic state assemblyman from Brooklyn, sent President Gould and CUNY's chancellor, Matthew Goldstein, a letter challenging the appointment of Petersen-Overton and accusing the doctoral student of showing bias against Israel and support for terrorism in his writings and the course syllabus.

Among Petersen-Overton's works is an unpublished paper titled, "Inventing the Martyr: Martyrdom as Palestinian National Signifier." Although his writings have criticized Israeli policy, many scholars in his field dispute the idea he has a strong bias, calling his views fairly mainstream.

The administration's decision to allow the hiring of Petersen-Overton after all came after the college's political-science department voted unanimously to recommend that he get the job and the department's appointments committee unanimously voted to make the job offer official, thereby appearing to head off any concerns about whether the appointment had gone through proper channels.

President Gould issued a statement in which she denied that outside influences had played any role in the original decision to rescind the job offer. She criticized the way the incident has been discussed and reiterated the college's view that Petersen-Overton's politics were not the basis for the earlier decision to revoke the job offer.

"Over the past several days, as a result of a provostial decision about an adjunct appointment, Brooklyn College has been thrust into a debate about academic freedom. This debate has been fueled at times by inflammatory rhetoric and mischaracterization of the facts. It is unfortunate that matters of utmost importance to our college community can be so rapidly co-opted by those with a political agenda and distorted by the media," she said.

Gould added: "We must never allow decisions about our students' education to be swayed by outside influence. In the matter at hand, this certainly has not been the case. On behalf of every member of this institution, I reaffirm our steadfast commitment to the principles of academic freedom, faculty governance, and standards of excellence."

Shortly after the announcement Petersen-Overton said he was looking forward to starting the course—and that he had been supported by hundreds and hundreds of calls and e-mails from students and faculty members from all over. "I'm overwhelmed by everything that has happened. I so appreciate the support," he said.

Petersen-Overton said he didn't want to answer the criticisms made of his views by Dov Hikind. "My concern was always what the college administration did," Petersen-Overton said, not what Hikind said.

Hikind released a statement blasting Brooklyn College for hiring Petersen-Overton. "It is pathetic that the administrations of Brooklyn College and CUNY has caved to intimidation tactics and reversed their earlier, praiseworthy decision to oust Mr. Petersen-Overton from his post. Mr. Petersen-Overton has stated in published reports that he 'understands' suicide bombing. In re-hiring Mr. Petersen-Overton, Brooklyn College and CUNY have sent a message to suicide bombers and their supporters that a publicly-funded institution of higher learning condones suicide bombing as an acceptable method of 'resistance.' Granting Mr. Petersen-Overton access to thousands of impressionable young minds, especially at the taxpayers' expense, is nothing short of shameful and embarrassing. By CUNY's own determination, Mr. Petersen-Overton was relieved of his teaching job and deemed unqualified because he did not hold a doctoral degree. His re-appointment and the university's flip-flopping on this issue is cowardice at its very worst."

Petersen-Overton has written about suicide bombers, although scholars have noted that writing about suicide bombers and their motivations does not mean endorsing such actions.

In a statement released before the university's reversal, Cary Nelson, national president of the American Association of University Professors, said he had reviewed the essay in question and that it was "a serious and informative work of scholarly analysis. Given that myths of sacrifice are promoted by many nation states in crisis, readers may learn from the essay no matter what their stand on Middle East politics may be."

Nelson called the rehiring of Petersen-Overton "a victory for academic freedom and for the faculty." He said that the case demonstrated that, when faculty groups unite and speak out, they can protect academic freedom. "It takes a country to sustain academic freedom," he said.

Sally Avery Bermanzohn, the political-science department's chair, said she was "thrilled" with the college's decision to hire Petersen-Overton. "This is a scholar who has done important work, that we feel has a lot to teach our students," she said. "We are happy to have him on board as part of our adjunct faculty, and we feel confident that this is going to be a great course."

Corey Robin, an associate professor of political science at Brooklyn College and the CUNY Graduate Center, said that "the administration, I think, understands very clearly the principles and issues that were at stake.".

But Mark LeVine, a professor of Middle Eastern history at the University of California at Irvine and a supporter of Petersen-Overton, argued that the college's earlier decision not to hire the doctoral student might have done lasting damage, by leaving others in academe reluctant to make appointments that could generate controversy.

"We need to prevent this from happening again," he said. "Who knows how many department chairs, or departments, when they think about hiring adjuncts, are going to have this kind of fight in the back of their mind?" Reported in: *Chronicle of Higher Education* online, February 1; insidehighered.com, February 1. □

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monitoring America …from page 44)

"This represents a shift for our country," she told New York City police officers and firefighters on the eve of the 9/11 anniversary this fall. "In a sense, this harkens back to when we drew on the tradition of civil defense and preparedness that predated today's concerns."

On a recent night in Memphis, Tennessee, a patrol car rolled slowly through a parking lot in a run-down section of town. The military-grade infrared camera on its hood moved robotically from left to right, snapping digital images of one license plate after another and analyzing each almost instantly.

Suddenly, a red light flashed on the car's screen along with the word "warrant."

"Got a live one! Let's do it," an officer called out.

The streets of Memphis are a world away from the streets of Kabul, yet these days, the same types of technologies and techniques are being used in both places to identify and collect information about suspected criminals and terrorists.

The examples go far beyond Memphis:

- Hand-held, wireless fingerprint scanners were carried by U.S. troops during the insurgency in Iraq

to register residents of entire neighborhoods. L-1 Identity Solutions is selling the same type of equipment to police departments to check motorists' identities.

- In Arizona, the Maricopa County Sheriff's Facial Recognition Unit, using a type of equipment prevalent in war zones, records 9,000 biometric digital mug shots a month.
- U.S. Customs and Border Protection flies General Atomics' Predator drones along the Mexican and Canadian borders—the same kind of aircraft, equipped with real-time, full-motion video cameras, that has been used in wars in Kosovo, Iraq and Afghanistan to track the enemy.

The special operations units deployed overseas to kill the al-Qaeda leadership drove technological advances that are now expanding in use across the United States. On the front lines, those advances allowed the rapid fusing of biometric identification, captured computer records and cellphone numbers so troops could launch the next surprise raid.

Here at home, it's the DHS that is enamored with collecting photos, video images and other personal information about U.S. residents in the hopes of teasing out terrorists.

The DHS helped Memphis buy surveillance cameras that monitor residents near high-crime housing projects, problematic street corners, and bridges and other critical infrastructure. It helped pay for license plate readers and defrayed some of the cost of setting up Memphis's crime-analysis center. All together it has given Memphis $11 million since 2003 in homeland security grants, most of which the city has used to fight crime.

"We have got things now we didn't have before," said Memphis Police Department Director Larry Godwin, who has produced record numbers of arrests using all this new analysis and technology. "Some of them we can talk about. Some of them we can't."

One of the biggest advocates of Memphis's data revolution is John Harvey, the police department's technology specialist, whose computer systems are the civilian equivalent of the fancier special ops equipment used by the military.

Harvey collects any information he can pry out of government and industry. When officers were wasting time knocking on the wrong doors to serve warrants, he persuaded the local utility company to give him a daily update of the names and addresses of customers.

When he wanted more information about phones captured at crime scenes, he programmed a way to store all emergency 911 calls, which often include names and addresses to associate with phone numbers. He created another program to upload new crime reports every five minutes and mine them for the phone numbers of victims, suspects, witnesses and anyone else listed on them.

Now, instead of having to decide which license plate numbers to type into a computer console in the patrol car, an officer can simply drive around, and the automatic license plate reader on his hood captures the numbers on every vehicle nearby. If the officer pulls over a driver, instead of having to wait twenty minutes for someone back at the office to manually check records, he can use a hand-held device to instantly call up a mug shot, a Social Security number, the status of the driver's license and any outstanding warrants.

The computer in the cruiser can tell an officer even more about who owns the vehicle, the owner's name and address and criminal history, and who else with a criminal history might live at the same address.

Take a recent case of two officers with the hood-mounted camera equipment who stopped a man driving on a suspended license. One handcuffed him, and the other checked his own PDA. Based on the information that came up, the man was ordered downtown to pay a fine and released as the officers drove off to stop another car.

That wasn't the end of it, though. A record of that stop—and the details of every other arrest made that night, and every summons written—was automatically transferred to the Memphis Real Time Crime Center, a command center with three walls of streaming surveillance video and analysis capabilities that rival those of an Army command center.

There, the information would be geocoded on a map to produce a visual rendering of crime patterns. This information would help the crime intelligence analysts predict trends so the department could figure out what neighborhoods to swarm with officers and surveillance cameras.

But that was still not the end of it, because the fingerprints from the crime records would also go to the FBI's data campus in Clarksburg, West Virginia. There, fingerprints from across the United States are stored, along with others collected by American authorities from prisoners in Saudi Arabia and Yemen, Iraq and Afghanistan.

There are 96 million sets of fingerprints in Clarksburg, a volume that government officials view not as daunting but as an opportunity.

This year for the first time, the FBI, the DHS and the Defense Department are able to search each other's fingerprint databases, said Myra Gray, head of the Defense Department's Biometrics Identity Management Agency, speaking to an industry group recently. "Hopefully in the not-too-distant future," she said, "our relationship with these federal agencies—along with state and local agencies—will be completely symbiotic."

At the same time that the FBI is expanding its West Virginia database, it is building a vast repository controlled by people who work in a top-secret vault on the fourth floor of the J. Edgar Hoover FBI Building in Washington. This one stores the profiles of tens of thousands of Americans and legal residents who are not accused of any crime. What

they have done is appear to be acting suspiciously to a town sheriff, a traffic cop or even a neighbor.

If the new Nationwide Suspicious Activity Reporting Initiative, or SAR, works as intended, the Guardian database may someday hold files forwarded by all police departments across the country in America's continuing search for terrorists within its borders.

The effectiveness of this database depends, in fact, on collecting the identities of people who are not known criminals or terrorists—and on being able to quickly compile in-depth profiles of them.

"If we want to get to the point where we connect the dots, the dots have to be there," said Richard A. McFeely, special agent in charge of the FBI's Baltimore office.

In response to concerns that information in the database could be improperly used or released, FBI officials say anyone with access has been trained in privacy rules and the penalties for breaking them.

But not everyone is convinced. "It opens a door for all kinds of abuses," said Michael German, a former FBI agent who now leads the American Civil Liberties Union's campaign on national security and privacy matters. "How do we know there are enough controls?"

The government defines a suspicious activity as "observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity" related to terrorism.

State intelligence analysts and FBI investigators use the reports to determine whether a person is buying fertilizer to make a bomb or to plant tomatoes; whether she is plotting to poison a city's drinking water or studying for a metallurgy test; whether, as happened on a Sunday morning in late September, the man snapping a picture of a ferry in the Newport Beach harbor in Southern California simply liked the way it looked or was plotting to blow it up.

Suspicious Activity Report N03821 says a local law enforcement officer observed "a suspicious subject …taking photographs of the Orange County Sheriff Department Fire Boat and the Balboa Ferry with a cellular phone camera." The confidential report, marked "For Official Use Only," noted that the subject next made a phone call, walked to his car and returned five minutes later to take more pictures. He was then met by another person, both of whom stood and "observed the boat traffic in the harbor." Next another adult with two small children joined them, and then they all boarded the ferry and crossed the channel.

All of this information was forwarded to the Los Angeles fusion center for further investigation after the local officer ran information about the vehicle and its owner through several crime databases and found nothing.

Authorities would not say what happened to it from there, but there are several paths a suspicious activity report can take:

At the fusion center, an officer would decide to either dismiss the suspicious activity as harmless or forward the report to the nearest FBI terrorism unit for further investigation. At that unit, it would immediately be entered into the Guardian database, at which point one of three things could happen:

The FBI could collect more information, find no connection to terrorism and mark the file closed, though leaving it in the database. It could find a possible connection and turn it into a full-fledged case.

Or, as most often happens, it could make no specific determination, which would mean that Suspicious Activity Report N03821 would sit in limbo for as long as five years, during which time many other pieces of information about the man photographing a boat on a Sunday morning could be added to his file: employment, financial and residential histories; multiple phone numbers; audio files; video from the dashboard-mounted camera in the police cruiser at the harbor where he took pictures; and anything else in government or commercial databases "that adds value," as the FBI agent in charge of the database described it.

That could soon include biometric data, if it existed; the FBI is working on a way to attach such information to files. Meanwhile, the bureau will also soon have software that allows local agencies to map all suspicious incidents in their jurisdiction.

The Defense Department is also interested in the database. It recently transferred 100 reports of suspicious behavior into the Guardian system, and over time it expects to add thousands more as it connects 8,000 military law enforcement personnel to an FBI portal that will allow them to send and review reports about people suspected of casing U.S. bases or targeting American personnel.

And the DHS has created a separate way for state and local authorities, private citizens, and businesses to submit suspicious activity reports to the FBI and to the department for analysis. As of December, there were 161,948 suspicious activity files in the classified Guardian database, mostly leads from FBI headquarters and state field offices. Two years ago, the bureau set up an unclassified section of the database so state and local agencies could send in suspicious incident reports and review those submitted by their counterparts in other states. Some 890 state and local agencies have sent in 7,197 reports so far.

Of those, 103 have become full investigations that have resulted in at least five arrests, the FBI said. There have been no convictions yet. An additional 365 reports have added information to ongoing cases.

But most remain in the uncertain middle, which is why within the FBI and other intelligence agencies there is much debate about the effectiveness of the bottom-up SAR approach, as well as concern over the privacy implications of retaining so much information on U.S. citizens and residents who have not been charged with anything.

The vast majority of terrorism leads in the United States originate from confidential FBI sources and from

the bureau's collaboration with federal intelligence agencies, which mainly work overseas. Occasionally a stop by a local police officer has sparked an investigation. Evidence comes from targeted FBI surveillance and undercover operations, not from information and analysis generated by state fusion centers about people acting suspiciously.

"It's really resource-inefficient," said Philip Mudd, a 20-year CIA counterterrorism expert and a top FBI national security official until he retired nine months ago. "If I were to have a dialogue with the country about this …it would be about not only how we chase the unknowns, but do you want to do suspicious activity reports across the country?… Anyone who is not at least suspected of doing something criminal should not be in a database."

Charles Allen, a longtime senior CIA official who then led the DHS's intelligence office until 2009, said some senior people in the intelligence community are skeptical that SARs are an effective way to find terrorists. "It's more likely that other kinds of more focused efforts by local police will gain you the information that you need about extremist activities," he said.

The DHS can point to some successes: Last year the Colorado fusion center turned up information on Najibullah Zazi, an Afghan-born U.S. resident planning to bomb the New York subway system. In 2007, a Florida fusion center provided the vehicle ownership history used to identify and arrest an Egyptian student who later pleaded guilty to providing material support to terrorism, in this case transporting explosives.

"Ninety-nine percent doesn't pan out or lead to anything" said Richard Lambert Jr., the special agent in charge of the FBI's Knoxville office. "But we're happy to wade through these things."

Ramon Montijo has taught classes on terrorism and Islam to law enforcement officers all over the country. "Alabama, Colorado, Vermont," said Montijo, a former Army Special Forces sergeant and Los Angeles Police Department investigator who is now a private security consultant. "California, Texas and Missouri," he continued.

What he tells them is always the same, he said: Most Muslims in the United States want to impose sharia law here. "They want to make this world Islamic. The Islamic flag will fly over the White House—not on my watch!" he said. "My job is to wake up the public, and first, the first responders."

With so many local agencies around the country being asked to help catch terrorists, it often falls to sheriffs or state troopers to try to understand the world of terrorism. They aren't FBI agents, who have years of on-the-job and classroom training.

Instead, they are often people like Lacy Craig, who was a police dispatcher before she became an intelligence analyst at Idaho's fusion center, or the detectives in Minnesota, Michigan and Arkansas who can talk at length about the lineage of gangs or the signs of a crystal meth addict. Now each of them is a go-to person on terrorism as well.

"The CIA used to train analysts forever before they graduated to be a real analyst," said Allen, the former top CIA and DHS official. "Today we take former law enforcement officers and we call them intelligence officers, and that's not right, because they have not received any training on intelligence analysis."

State fusion center officials say their analysts are getting better with time. "There was a time when law enforcement didn't know much about drugs. This is no different," said Steven W. Hewitt, who runs the Tennessee fusion center, considered one of the best in the country. "Are we experts at the level of [the National Counterterrorism Center]? No. Are we developing an expertise? Absolutely."

But how they do that is usually left up to the local police departments themselves. In their desire to learn more about terrorism, many departments are hiring their own trainers. Some are self-described experts whose extremist views are considered inaccurate and harmful by the FBI and others in the intelligence community.

Like Montijo, Walid Shoebat, a onetime Muslim who converted to Christianity, also lectures to local police. He too believes that most Muslims seek to impose sharia law in the United States. To prevent this, he said in an interview, he warns officers that "you need to look at the entire pool of Muslims in a community."

When Shoebat spoke to the first annual South Dakota Fusion Center Conference in Sioux Falls this June, he told them to monitor Muslim student groups and local mosques and, if possible, tap their phones. "You can find out a lot of information that way," he said.

A book expanding on what Shoebat and Montijo believe has just been published by the Center for Security Policy, a Washington-based neoconservative think tank. *Shariah: The Threat to America* describes what its authors call a "stealth jihad" that must be thwarted before it's too late.

The book's co-authors include such notables as former CIA director R. James Woolsey and former deputy undersecretary of defense for intelligence Lt. Gen. William G. Boykin, along with the center's director, a longtime activist. They write that most mosques in the United States already have been radicalized, that most Muslim social organizations are fronts for violent jihadists and that Muslims who practice sharia law seek to impose it in this country.

Frank Gaffney Jr., director of the center, said his team has spoken widely, including to many law enforcement forums.

"Members of our team have been involved in training programs for several years now, many of which have been focused on local law enforcement intelligence, homeland security, state police, National Guard units and the like," Gaffney said. "We're seeing a considerable ramping-up of interest in getting this kind of training."

Government terrorism experts call the views expressed in the center's book inaccurate and counterproductive. They say the DHS should increase its training of local police, using teachers who have evidence-based viewpoints.

DHS spokeswoman Amy Kudwa said the department does not maintain a list of terrorism experts but is working on guidelines for local authorities wrestling with the topic.

So far, the department has trained 1,391 local law enforcement officers in analyzing public information and 400 in analytic thinking and writing skills. Kudwa said the department also offers counterterrorism training through the Federal Emergency Management Agency, which this year enrolled 94 people in a course called "Advanced Criminal Intelligence Analysis to Prevent Terrorism."

The DHS also provides local agencies a daily flow of information bulletins. These reports are meant to inform agencies about possible terror threats. But some officials say they deliver a never-ending stream of information that is vague, alarmist and often useless. "It's like a garage in your house you keep throwing junk into until you can't park your car in it," says Michael Downing, deputy chief of counterterrorism and special operations for the Los Angeles Police Department.

A review of nearly 1,000 DHS reports dating back to 2003 and labeled "For Official Use Only" underscores Downing's description. Typical is one from May 24, 2010, titled "Infrastructure Protection Note: Evolving Threats to the Homeland."

It tells officials to operate "under the premise that other operatives are in the country and could advance plotting with little or no warning." Its list of vulnerable facilities seems to include just about everything: "Commercial Facilities, Government Facilities, Banking and Financial and Transportation . . ."

Bart R. Johnson, who heads the DHS's intelligence and analysis office, defended such reports, saying that threat reporting has "grown and matured and become more focused." The bulletins can't be more specific, he said, because they must be written at the unclassified level.

Recently, the International Association of Chiefs of Police agreed that the information they were receiving had become "more timely and relevant" over the past year.

Downing, however, said the reports would be more helpful if they at least assessed threats within a specific state's boundaries. States have tried to do that on their own, but with mixed, and at times problematic, results.

In 2009, for instance, after the DHS and the FBI sent out several ambiguous reports about threats to mass-transit systems and sports and entertainment venues, the New Jersey Regional Operations Intelligence Center's Threat Analysis Program added its own information. "New Jersey has a large mass-transit infrastructure," its report warned, and "an NFL stadium and NHL/NBA arenas, a soccer stadium, and several concert venues that attract large crowds."

In Virginia, the state's fusion center published a terrorism threat assessment in 2009 naming historically black colleges as potential hubs for terrorism.

From 2005 to 2007, the Maryland State Police went even further, infiltrating and labeling as terrorists local groups devoted to human rights, antiwar causes and bike lanes.

And in Pennsylvania last year, a local contractor hired to write intelligence bulletins filled them with information about lawful meetings as varied as Pennsylvania Tea Party Patriots Coalition gatherings, antiwar protests and an event at which environmental activists dressed up as Santa Claus and handed out coal-filled stockings.

Even if the information were better, it might not make a difference for the simplest of reasons: In many cities and towns across the country, there is just not enough terrorism-related work to do.

In Utah on one recent day, one of five intelligence analysts in the state's fusion center was writing a report about the rise in teenage overdoses of an over-the-counter drug. Another was making sure the visiting president of Senegal had a safe trip. Another had just helped a small town track down two people who were selling magazine subscriptions and pocketing the money themselves.

In the Colorado Information Analysis Center, some investigators were following terrorism leads. Others were looking into illegal Craigslist postings and online "World of Warcraft" gamers.

The vast majority of fusion centers across the country have transformed themselves into analytical hubs for all crimes and are using federal grants, handed out in the name of homeland security, to combat everyday offenses.

This is happening because, after 9/11, local law enforcement groups did what every agency and private company did: they followed the money.

The DHS helped the Memphis Police Department, for example, purchase 90 surveillance cameras, including 13 that monitor bridges and a causeway. It helped buy the fancy screens on the walls of the Real Time Crime Center, as well as radios, robotic surveillance equipment, a mobile command center and three bomb-sniffing dogs. All came in the name of port security and protection to critical infrastructure.

Since there hasn't been a solid terrorism case in Memphis yet, the equipment's greatest value has been to help drive down city crime. Where the mobile surveillance cameras are set up, criminals scatter, said Lt. Mark Rewalt, who, on a recent Saturday night, scanned the city from an altitude of 1,000 feet.

Flying in a police helicopter, Rewalt pointed out some of the cameras the DHS has funded. They are all over the city, in mall parking lots, in housing projects, at popular street hangouts. "Cameras are what's happening now," he marveled.

Meanwhile, another post-9/11 unit in Tennessee has had even less terrorism-related work to do. The Tennessee National Guard 45th Weapons of Mass Destruction Civil

Support Team, one of at least 50 such units around the country, was created to respond to what officials still believe is the inevitable release of chemical, biological or radiological material by terrorists.

The unit's 22 hazardous-materials personnel have the best emergency equipment in the state. A fleet of navy-blue vehicles—command, response, detection and tactical operations trucks—is kept polished and ready to roll in a garage at the armory in Smyrna.

The unit practices WMD scenarios constantly. But in real life, the crew uses the equipment very little: twice a year at NASCAR races in nearby Bristol to patrol for suspicious packages. Other than that, said Capt. Matt Hayes, several times a year they respond to hoaxes.

The fact that there has not been much terrorism to worry about is not evident on the Tennessee fusion center's Web site. Click on the incident map, and the state appears to be under attack.

Red icons of explosions dot Tennessee, along with blinking exclamation marks and flashing skulls. The map is labeled: "Terrorism Events and Other Suspicious Activity. But if you roll over the icons, the explanations that pop up have nothing to do with major terrorist plots: "Johnson City police are investigating three 'bottle bombs' found at homes over the past three days," one description read recently. "… The explosives were made from plastic bottles with something inside that reacted chemically and caused the bottles to burst."

Another told a similar story: "The Scott County Courthouse is currently under evacuation after a bomb threat was called in Friday morning. Update: Authorities completed their sweep …and have called off the evacuation."

Nine years after 9/11, this map is part of the alternative geography where millions of people are assigned to help stop terrorism. Memphis Police Director Godwin is one of them, and he has his own version of what that means in a city where there have been 86 murders so far this year.

"We have our own terrorists, and they are taking lives every day," Godwin said. "No, we don't have suicide bombers—not yet. But you need to remain vigilant and realize how vulnerable you can be if you let up." Reported in: *Washington Post*, December 20. □

WikiLeaks…from page 46)

their "primary interest is in exposing oppressive regimes in Asia, the former Soviet bloc, Sub-Saharan Africa and the Middle East, but we also expect to be of assistance to people of all regions who wish to reveal unethical behavior in their governments and corporations."

WikiLeaks, i.e. the team standing behind this organization, expresses its position by exposing problematic governmental conduct, especially when this conduct is being concealed.

Nonetheless, WikiLeaks differs fundamentally from other media actors, like news-agencies, which have a long history of exposing problematic governmental conduct using similar sources as WikiLeaks but which did not suffer from a crackdown on the scale WikiLeaks has since the last Cablegate-leak. The difference is that WikiLeaks offers raw data. As Julian Assange and other WikiLeaks activists have stated in interviews, WikiLeaks was created in reaction to calls of bloggers, activists and journalists around the world, who are aware of problematic governmental conduct but need evidence in order to take actions.

WikiLeaks publishes many documents, which provide evidence; with the intent that activists will build upon these documents (this is what the Wiki in WikiLeaks stand for). Considering that the conventional media presents interpretation of raw information, which is often biased (for example because of economical consideration, political orientation or world-view of the respective agency), posting raw data is the most objective form of journalism existing nowadays, but doing so seems to spark strong social and political reactions.

The crackdown on WikiLeaks has drawn much attention to a developing danger to free speech, which has a potential of becoming a major obstacle for free speech, namely intermediary censorship (as termed by Ethan Zuckerman in *Access Controlled*). Currently, the situation is that the Internet is almost entirely privately held. For users this means that despite the normative belief in a (cyber-)space, in which they have a protected free speech, the fact is that they are always bound to terms of service, which are written by the online service providers (OSP).

The boundaries set by these terms of service can reflect social norms and legal frameworks in the country or region where the OSP is located, as well the service provider's financial interests or personal world-view. OSPs have the right to limit their service on the grounds of certain rules and users respectively have the choice of whether to use those services or not. The main question, however, is to what extent can we rely on privately owned spaces (i.e. services) for us to carry out our free speech?

Concerning WikiLeaks, Amazon's and OVH's refusal to continue hosting the website after being contacted by US Senator Joe Lieberman and the French government are clear examples of intermediary censorship. Visa, MasterCard and PayPal denying their clients' ability to donate money to WikiLeaks (although, as discussed in the press, other racist and propaganda organizations with more questionable legality continue to enjoy these

companies' services) can also be perceived as intermediary censorship to some extent as well as a part of a financial suffocation tactic.

An important point in this matter is that no court of law has yet determined that WikiLeaks' actions are illegal. Furthermore, in democratic states there is a clearly drawn line – websites are to be taken down (partially or entirely) only via court decision, not at the wish of the government, let alone a single politician.

Another issue in the WikiLeaks case, which shocked the library society, was the Library of Congress (LC) censoring WikiLeaks within the library as of December 3, for its staff and users, stating that "the Library decided to block WikiLeaks because applicable law obligates federal agencies to protect classified information. Unauthorized disclosures of classified documents do not alter the documents' classified status or automatically result in declassification of the documents." (LC BLOG: Why the Library of Congress Is Blocking WikiLeaks)

Librarians around the US called on the American Library Association to condemn this move, mentioning that preventing access to information of public interest and blocking access to publically published information are both forms of censorship and abridgment of intellectual freedom.

Eventually, LC unblocked WikiLeaks on December 7 and issued a notice to all employees and patrons, addressing their responsibility to comply with laws regarding classified information, regardless of whether the information appears on WikiLeaks or another source.

Furthermore, a library is a government agency in order to ensure its independence from other factors (such as market factors) and to have the law by its side. This independence is vital for libraries (above all a national library) to be able to fulfill their mission of creating free access to information and promoting free speech. Thus, by compelling a library to censor a publically available source due to the library's status as a federal agency may function as an abuse of the state-library relation for a goal that is completely contradictory to its original one.

Alongside the tactics of governments and intermediates, the actions of WikiLeaks must also be critically addressed. Questions about the goals, harm-benefit balance and relevance of the leaks together with the concern to the well being of persons mentioned in the leaks (e.g. in the War Diaries leak from Iran and Afghanistan) should be addressed.

In conclusion, there are many important and complex questions to address in the discussion about WikiLeaks and the issues, which are made clear from this case. For many of them, due to the variety of aspects involved, there is no ultimate right answer. However, one should consider the actions of and implication on the different actors in the case, including WikiLeaks, governments, intermediates, and society itself. □

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censorship dateline …from page 52)

society and play a critical role in ensuring the health of our nation's participatory democracy. The exhibition should not be overshadowed by the controversy it has generated, but neither should the importance of defending the First Amendment rights of artists be underplayed; it is necessary both to protect and to encourage the incisive, intelligent and innovative art of our time."

On December 13, the Warhol Foundation sent a letter to the Smithsonian, which declared:

"Although we have enjoyed our growing relationship during the past three years, and have given more than $375,000 to fund several exhibitions at various Smithsonian institutions, we cannot stand by and watch the Smithsonian bow to the demands of bigots who have attacked the exhibition out of ignorance, hatred and fear.

"Last week the Foundation published a statement on its website condemning the National Portrait Gallery's removal of the work and on Friday our Board of Directors met to discuss the long-term implications of the Museum's behavior on the Foundation's relationship with the Smithsonian Institution. After careful consideration, the Board voted unanimously to demand that you restore the censored work immediately, or the Warhol Foundation will cease funding future exhibitions at all Smithsonian institutions."

'Rep. Eric Cantor (R-Va.) has said that taxpayer-funded museums should uphold 'common standards of decency.' But such 'standards' don't exist, and shouldn't, in a pluralist society. My decency is your disgust, and one point of museums, and of contemporary art in general, is to test where lines get drawn and how we might want to rethink them. A great museum is a laboratory where ideas get tested, not a mausoleum full of dead thoughts and bromides," wrote Gopnik. Reported in: Washington Post, November 30; www.warholfoundation.org. □

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from the bench …from page 56)

"devoid of common sense" and said it "will only serve to embolden the networks to air even more graphic material." The case is ABC Inc. et al v. FCC. Reported in: reuters.com, January 4.

privacy

San Francisco, California

In a decision filed January 3, the California Supreme Court allowed police to search arrestees' cell phones without

a warrant, saying defendants lose their privacy rights for any items they're carrying when taken into custody.

Under U.S. Supreme Court precedents, "this loss of privacy allows police not only to seize anything of importance they find on the arrestee's body ... but also to open and examine what they find," the state court said in a 5-2 ruling.

The majority, led by Justice Ming Chin, relied on decisions in the 1970s by the nation's high court upholding searches of cigarette packages and clothing that officers seized during an arrest and examined later without seeking a warrant from a judge. The dissenting justices said those rulings shouldn't be extended to modern cell phones that can store huge amounts of data.

The decision allows police "to rummage at leisure through the wealth of personal and business information that can be carried on a mobile phone or handheld computer merely because the device was taken from an arrestee's person," said Justice Kathryn Mickle Werdegar, joined in dissent by Justice Carlos Moreno. They argued that police should obtain a warrant—by convincing a judge that they will probably find incriminating evidence—before searching a cell phone.

The issue has divided other courts. U.S. District Judge Susan Illston of San Francisco ruled in May 2007 that police had violated drug defendants' rights by searching their cell phones after their arrests. The Ohio Supreme Court reached a similar conclusion in a December 2009 ruling in which the state unsuccessfully sought U.S. Supreme Court review.

The Ohio-California split could prompt the nation's high court to take up the issue, said Deputy Attorney General Victoria Wilson, who represented the prosecution in the case. "This has an impact on the day-to-day jobs of police officers, what kind of searches they can conduct without a warrant when they arrest someone," she said. "It takes it into the realm of new technology."

The U.S. Supreme Court ruled in June that a police department did not violate an officer's privacy when it read text messages he had sent on a department-owned pager. Although the court has never ruled on police searches of cell phones, Wilson argued that it has signaled approval by allowing officers to examine the contents of arrestees' wallets without a warrant.

The ruling upheld the drug conviction of Gregory Diaz, arrested in April 2007 by Ventura County sheriff's deputies who said they had seen him taking part in a drug deal. An officer took a cell phone from Diaz's pocket, looked at the text message folder 90 minutes later, and found a message that linked Diaz to the sale, the court said. Diaz pleaded guilty, was placed on probation and appealed the search. Reported in: San Francisco Chronicle, January 4.

Columbus, Ohio

Police must obtain search warrants before perusing Internet users' e-mail records, a federal appeals court ruled in a landmark decision that struck down part of a 1986 law allowing warrantless access.

In a case involving a penile-enhancement entrepreneur convicted of fraud and other crimes, the U.S. Court of Appeals for the Sixth Circuit said that the practice of warrantless access to e-mail messages violates the Fourth Amendment, which prohibits "unreasonable" searches and seizures.

"Given the fundamental similarities between e-mail and traditional forms of communication, it would defy common sense to afford e-mails lesser Fourth Amendment protection," the court ruled in an 3-0 opinion written by Judge Danny Boggs, a Reagan appointee.

The court affirmed the conviction of Steven Warshak, who was charged with defrauding customers of his "natural male enhancement" pills, but sent his case back to a lower court for a new sentence. Warshak remains liable for a $44 million money laundering judgment as well.

"The most significant thing from our perspective and that of the victims is that they upheld all the convictions against Mr. Warshak and that they affirmed the $400 million-plus forfeiture order," a spokesman for the U.S. Attorney's office in Ohio, which prosecuted this case, said.

Warshak owned Berkeley Premium Nutraceuticals, a mail order company that in 2001 launched Enzyte, which claimed, in the delicate words of the court, "to increase the size of a man's erection." Enzyte was a remarkable success: by the end of 2004, Berkeley employed 1,500 people and rang up about $250 million in annual sales.

The decision striking down part of the 1986 Stored Communications Act rebuffed arguments made by the U.S. Department of Justice, which insisted the law was constitutional. In a brief filed during an earlier phase of the case, prosecutors argued that the Fourth Amendment doesn't apply because "compelled disclosure of e-mail is permissible under most providers' terms of service."

Since 1986, the general rule has been that police could obtain Americans' e-mail messages up to 180 days old only with a warrant. Older messages, however, could be accessed with an administrative subpoena or what's known as a 2703(d) order, both of which lack a warrant's probable cause requirement.

The Stored Communications Act—which created the 2703(d) orders—was enacted at a time when e-mail was the domain of a small number of academics and business customers. Telephone modems, BBSs, and UUCP links were used in that pre-Internet era that was defined by computers like the black-and-white Macintosh Plus and services like H&R Block's CompuServe. Since then, the Sixth Circuit ruled, technological life has changed dramatically:

"Since the advent of e-mail, the telephone call and the letter have waned in importance, and an explosion of Internet-based communication has taken place. People are now able to send sensitive and intimate information, instantaneously, to friends, family, and colleagues half a world away. Lovers exchange sweet nothings, and businessmen swap ambitious

plans, all with the click of a mouse button. Commerce has also taken hold in e-mail. Online purchases are often documented in e-mail accounts, and e-mail is frequently used to remind patients and clients of imminent appointments. In short, 'account' is an apt word for the conglomeration of stored messages that comprises an e-mail account, as it provides an account of its owner's life. By obtaining access to someone's e-mail, government agents gain the ability to peer deeply into his activities."

Even though the law is unconstitutional, the court concluded, Warshak's conviction should be upheld because police relied "in good faith" on their interpretation of the surveillance law. In a concurring opinion, Judge Damon Keith, a Clinton appointee, wrote he was troubled by the Justice Department's "back-door wiretapping" procedures in this case, but agreed with the decision to uphold the conviction.

Orin Kerr, a law professor at George Washington University who has written extensively about electronic surveillance, called the decision "correct" and "quite persuasive." Kevin Bankston, an attorney at the Electronic Frontier Foundation who wrote an amicus brief in the case, called it a key decision because it's the "only federal appellate decision currently on the books that squarely rules on this critically important privacy issue." Reported in: cnet.com, December 14.

prisons

Plainfield, Indiana

A recent decision by a federal judge in Indiana shows that prison officials must provide at least some justification for broad-based bans on reading material.

Michael N. Newsom, a former inmate at Plainfield Correctional Facility, contended that prison officials including Superintendent Wendy Knight violated his First Amendment rights by withholding and then destroying a hardcover copy of *Harry Potter and the Deathly Hallows* that had been mailed to him.

Plainfield has a policy of banning all hardcover books as inmate personal property, claiming that they present security risks and could be used to smuggle contraband. However, inmates can check hardcover books out of the prison library and can possess softcover books.

U.S. District Court Judge Jane Magnus-Stinson refused to grant Knight and the other defendants their request for summary judgment—to have Newsom's case thrown out. She wrote in her December 21 opinion in Newsom v. Knight that "defendants have not shown that a wholesale prohibition on the receipt or possession of hardcover books, even those sent directly from the publisher, is a reasonable response to these security concerns."

Prisoners' First Amendment claims are evaluated through a legal standard that is quite deferential to prison officials. Under the U.S. Supreme Court's 1987 decision Turner v. Safley, prison officials must show only that their policy is reasonably related to legitimate prison concerns, such as safety or rehabilitation. But the Court also said in Turner v. Safley that "prison walls do not form a barrier separating inmates from the protections of the Constitution."

Prison officials at Plainfield did not establish that the Harry Potter book was available in the library or that it was available in softcover at the time, Magnus-Stinson wrote in refusing to reject Newsom's First Amendment claim. She did reject another part of Newsom's lawsuit, involving the confiscation of his *Slingshot* newspaper. The judge accepted the prison officials' testimony that the radical newspaper published anarchist symbols and presented a security threat. Unlike the wholesale ban on hardcover books, Magnus-Stinson said, the confiscation of the newspaper was reasonably related to security concerns. Reported in: firstamendmentcenter.com, December 30. □

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is it legal …from page 68)

Internet's growth—the development of free, advertising-supported content.

Even within the FTC itself, there was not unanimous support for a do-not-track effort. William E. Kovacic, a Republican commissioner who was the agency's chairman during the last year of the Bush administration, concurred with the decision to release the FTC report. But he added that he believed the do-not-track recommendation was "premature," and that the commission needed to present "greater support for the proposition that consumer expectations of privacy are largely going unmet."

Some Democrats in the House and the Senate, however, have already embraced the idea of a do-not-track mechanism. On December 2, Representative Ed Markey, a Massachusetts Democrat, said he would introduce a bill that would put in place such a system to prevent the tracking of children using the Internet.

Also on December 2 the House Subcommittee on Commerce, Trade and Consumer Protection held a hearing to examine the feasibility of a simple method of opting out of online tracking. At the hearing Republicans generally expressed caution with varying degrees of support for stricter privacy measures. "We need to be mindful not to enact legislation that would hurt a recovering economy," said Representative Ed Whitfield of Kentucky, the leading Republican on the House Subcommittee on Commerce, Trade and Consumer Protection.

"While I agree it is important to have consumers understand what information is being collected and how it is used," Mr. Whitfield said, "we need to seriously discuss the do-not-track model and evaluate whether it accomplishes the appropriate objectives."

If Congress were to mandate a "do not track" feature, it could upend the business models of some advertising agencies and companies who gather consumer data and build profiles of Internet users. But it would not prevent basic targeted advertising, where an individual site serves up ads related to a search terms.

Marc Rotenberg, the executive director for the Electronic Privacy Information Center, said the proposal of a 'do not track' mechanism was an important step but not the end of the conversation.

"There's a growing sense that the online ad industry is out of control from a privacy perspective and that some rules need to be put in place," said Rotenberg, whose organization has not decided whether to support the 'do not track' proposal. "I don't think we're at the point yet where we can say 'do not track' is the silver bullet when it comes to online advertising."

The makers of the most widely used Web browsers said that they supported consumer privacy and had already made efforts to protect it as part of their products. In a statement, Google said, "We agree with the FTC that people should be able to understand what information they share and how it's used. That's why we simplified our privacy policies earlier this year, offer control through our privacy tools, and explain our approach to privacy in plain language and through YouTube videos in our privacy center."

Harvey Anderson, general counsel for Mozilla, stated in a blog post: "While we'll need more time to digest and evaluate the details, we're encouraged by what we've seen so far. In particular, the FTC has proposed a set of principles that align well with the Mozilla manifesto and our approach to software development."

Apple, which makes the Safari browser, declined comment. In a statement, Microsoft said that the latest version of its browser, Internet Explorer 8, "has some of the most robust privacy features on the market," including features it calls InPrivate Browsing and InPrivate Filtering, which allow a user to browse the Web without being tracked.

But those types of features also illustrate some of the shortcomings that the FTC found in current industry efforts. The Microsoft browser requires a user to set those enhanced privacy controls at the start of every new browsing session.

Chris Soghoian, a privacy and security researcher, said using privacy options in most Internet browsers "doesn't do much." At the Consumer Watchdog conference, Soghoian said that because many of the companies that make Web browsers are also supported by advertising networks, "the design decisions are motivated by a desire not to hurt their advertising divisions."

"The situation right now is laughable," he added. "There certainly isn't a single one-stop shop."

Joan Gillman, an executive vice president at Time Warner Cable, said in a statement to the subcommittee that "do-not-track could hinder job creation within the advertising industry and by Web sites that rely on advertising revenues," as well as "inhibit innovation and the development of new services."

But Susan Grant, the director of consumer protection at the Consumer Federation of America, said that the type of all-encompassing surveillance becoming increasingly common online would rarely be tolerated.

"If someone were following you around in the physical world—tailing you and making note of everywhere you go, what you read, what you eat, who you see, what music you listen to, what you buy, what you watch—you might find this disturbing," she said.

"On the Internet," she added, "even if the tracker doesn't know your name, you are not anonymous." She pointed to technology like so-called cookies and other persistent, digital identifiers that "are essentially personally identifying information."

Some people raised questions about whether the government was the best party to devise and put in place a do-not-track system. Others suggested that the collection of information about people who do not want to be followed online would itself create new privacy problems.

David Vladeck, director of the FTC's bureau of consumer protection, responded to that concern by saying that the government would not need to be involved in managing such a system; it would only enforce its requirements. "We're not proposing the creation of a list," Vladeck said. "Nor are we proposing a centralized system managed by the federal government. While the Federal Trade Commission must be able to ensure through enforcement that a do-not-track mechanism effectively implements consumer choice, there is no need for it to be administered by the federal government."

In addition, a do-not-track feature would be different from the national do-not-call registry in significant ways, Vladeck said. While the do-not-call registry uses a phone number as a unique identifier, there exists no such identifier for computers. Internet protocol addresses can change frequently, and consumers typically use multiple devices and Internet service providers to access online content.

There have been hints of broader support among House Republicans for stricter privacy measures, including from Representative Joe L. Barton of Texas, Republican Chair of the House Energy and Commerce Committee.

"I want the Internet economy to prosper, but it can't unless the people's right to privacy means more than a right only to hear excuses after the damage is done," Barton said in a statement issued after the FTC released its report. "In the next Congress, the Energy and Commerce Committee and our subcommittees are going to find out if Internet privacy policies really mean anything, and if necessary, how to make them stick." Reported in: *New York Times*, December 1, 3.

Internet

Washington, D.C.

The U.S. Department of Justice and an organization representing police chiefs from around the country renewed calls January 25 for legislation mandating Internet Service Providers (ISP) to retain certain customer usage data for up to two years.

The calls, which are stoking long standing privacy fears, were made at a hearing convened by a House subcommittee that is chaired by Rep. James Sensenbrenner, a Republican congressman from Wisconsin. Four years ago, Sensenbrenner proposed, and then quickly withdrew, legislation calling for mandatory data retention for ISPs.

In prepared testimony, Jason Weinstein, deputy assistant attorney general at the Justice Department, said that data retention was crucial to fighting Internet crimes (PDF document), especially online child pornography. Current policies that only require ISPs to preserve usage data at the specific request of law enforcement authorities are just not sufficient, Weinstein said. Increasingly, law enforcement authorities are coming up empty-handed in their efforts to go after online predators and other criminals because of the unavailability of data relating to their online activities, Weinstein said.

"There is no doubt among public safety officials that the gaps between providers' retention policies and law enforcement agencies' needs, can be extremely harmful to the agencies' investigations," he said in written testimony.

In many cases, ISPs are already collecting and maintaining "non-content" records about who is using their services and how for business reasons, and for handling issues such as customer disputes, Weinstein said. Those same records can be extremely useful in criminal investigations too, he said.

However, ISPs have widely varying policies for storing such data, with some deleting it in a manner of days and others retaining it for months, he said. By making it compulsory for them to store usage data for specific lengths of time, law enforcement authorities are assured of getting access to the data when they need it, he said.

In his testimony, Weinstein admitted that a data retention policy on the industry raised valid privacy concerns. However, such concerns need to be addressed and balanced against the need for law enforcement to have access to the data, he said. "Denying law enforcement that evidence prevents law enforcement from identifying those who victimize others online," Weinstein said.

John Douglas, chief of police in Overland Park, Kansas and a representative of the International Association of Chiefs of Police, echoed similar concerns. "Clearly, preserving digital evidence is crucial in any modern-day criminal investigation," Douglas said in his prepared testimony for the House subcommittee. On occasion, law enforcement has been able to use existing legal processes to get ISPs to preserve data in connection with specific investigations, he said.

However, because of widely varying data retention policies, sometimes law enforcement requests for protecting data are made too late. "There are cases where we are not able to work quickly enough—mostly because a 'lead' is discovered after the logs have expired or we are unaware of the specific service provider's protocols concerning data retention time periods," Douglas said.

Calls for a new data retention policy are not new. In the past, numerous others, including FBI director Robert Mueller and former attorney general Alberto Gonzalez, have also urged Congress to consider similar legislation. Reported in: *Computer World* online, January 25 □

intellectual freedom bibliography

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