newsletter on intellectual freedom

IFC ALA

Editor: Henry Reichman, California State University, East Bay
Founding Editor: Judith F. Krug (1940–2009)
Publisher: Barbara Jones
Office for Intellectual Freedom, American Library Association

ISSN 0028-9485

July 2010 ☐ Vol. LIX ☐ No. 4 ☐ www.ala.org/nif

TTYL series tops 2009 list of challenged books

Lauren Myracle's best-selling young adult novel series *TTYL*, the first-ever novels written entirely in the style of instant messaging, tops the American Library Association's (ALA) Top Ten list of the Most Frequently Challenged Books of 2009.

Two books are new to the list: *Twilight* (series) by Stephanie Meyer and *My Sister's Keeper*, by Jodi Picoult.

Both Alice Walker's *The Color Purple* and Robert Cormier's *The Chocolate War* return after being dropped from the list in 2008.

"Even though not every book will be right for every reader, the ability to read, speak, think and express ourselves freely are core American values," said Barbara Jones, director of the ALA's Office for Intellectual Freedom. "Protecting one of our most fundamental rights—the freedom to read—means respecting each other's differences and the right of all people to choose for themselves what they and their families read."

For nearly twenty years, the ALA Office for Intellectual Freedom (OIF) has collected reports on book challenges. A challenge is defined as a formal, written complaint, filed with a library or school, requesting that materials be removed or restricted because of content or appropriateness. In 2009, the Office received 460 reports on efforts to remove or restrict materials from school curricula and library bookshelves.

Though ALA receives reports of challenges in public libraries, schools, and school libraries from a variety of sources, a majority of challenges go unreported. The Office estimates that its statistics reflect only 20–25% of the challenges that actually occur.

The ALA's Top Ten Most Frequently Challenged Books of 2009 reflect a range of themes, and consist of the following titles:

1. *TTYL*; *TTFN*; *L8R*, *G8R* (series), by Lauren Myracle. Reasons: Nudity, Sexually Explicit, Offensive Language, Unsuited to Age Group, Drugs.
2. *And Tango Makes Three*, by Peter Parnell and Justin Richardson. Reasons: Homosexuality.
3. *The Perks of Being A Wallflower*, by Stephen Chbosky. Reasons: Homosexuality, Sexually Explicit, Anti-Family, Offensive Language, Religious Viewpoint, Unsuited to Age Group, Drugs, Suicide.
4. *To Kill A Mockingbird*, by Harper Lee. Reasons: Racism, Offensive Language, Unsuited to Age Group.

(continued on page 158)

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

in this issue

targets of the censor

(ISSN 0028-9485)

Newsletter on Intellectual Freedom is published bimonthly (Jan., Mar., May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, IL 60611. The newsletter is also available online at www.ala.org/nif. Subscriptions: $70 per year (print), which includes annual index; $50 per year (electronic); and $85 per year (both print and electronic). For multiple subscriptions to the same address, and for back issues, please contact the Office for Intellectual Freedom at 800-545-2433, ext. 4223 or oif@ala.org. Editorial mail should be addressed to the Office of Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Periodical postage paid at Chicago, IL and at additional mailing offices. POSTMASTER: send address changes to Newsletter on Intellectual Freedom, 50 E. Huron St., Chicago, IL 60611.

Texas board adopts new high school curriculum

The Texas State Board of Education has adopted new social studies and history guidelines for Texas high school classrooms. The board voted 9–5 on May 21 to approve the high school standards. Final edits were being made on the elementary school curriculum.

The standards have been given a more conservative bent by the board. They dictate how political events and figures will be taught to some 4.8 million schoolchildren in Texas and beyond for the next decade. The standards also will be used by textbook publishers who often develop materials for other states based on those approved in Texas.

That wide reach brought national attention to the months of debate leading up to this week's meeting, which featured testimony from educators, civil rights leaders and a former U.S. education secretary. Many argued that the proposal amounted to a move by conservatives to promote their political ideology and, pointing to the board's lack of historical knowledge, urged board members to delay their vote. The attention was so intense that it contributed to the defeat of one of the most conservative members, Chairman Don McLeroy, in the March state Republican primary.

As the debate continued, conservatives rejected language to modernize the classification of historic periods to B.C.E. and C.E. from the traditional B.C. and A.D. Conservatives say the Texas history curriculum has been unfairly skewed to the left after years of Democrats controlling the board.

Democrats and a moderate Republican accused conservatives on the board of trying to stir up a needless controversy by using the president's full name, Barack Hussein Obama, saying his middle name was loaded with negative connotation. Critics had complained that Obama's full name was conspicuously absent in a high school history course that referred only to the "the election of the first black president."

When a Democrat tried to fix the omission, Republican David Bradley said "I think we give him the full honor and privilege of his full name." Obama's name caused him trouble during the 2008 presidential campaign, when some critics tried to use it to cast doubt on his American origin and faith.

Though they lost on the president's name, conservatives scored a string of victories as the guidelines neared approval, including a requirement that public school students in Texas evaluate efforts by global organizations such as the United Nations to undermine U.S. sovereignty.

McLeroy, one of the board's most outspoken conservatives, offered the amendment requiring students to evaluate efforts by global organizations including the U.N. to undermine U.S. sovereignty, saying they threatened individual liberty and freedom.

With little criticism from Democrats on the board, conservatives added language that would require students to discuss the solvency of "long-term entitlements such as Social Security and Medicare."

During the months-long process, conservatives also have successfully strengthened the requirements on teaching the Judeo-Christian influences of the nation's Founding Fathers and attempted to water down rationale for the separation of church and state. If adopted, the standards will refer to the U.S. government as a "constitutional republic," rather than "democratic," and students will be required to study the decline in the value of the U.S. dollar, including the abandonment of the gold standard.

In previous discussions, the board added language heralding "American exceptionalism" and the U.S. free enterprise system, suggesting it thrives best without excessive government intervention. It also required students learn to about the Second Amendment right to bear arms specifically, in addition to the Bill of Rights. And they removed a suggestion that students learn about hip-hop as an example of a significant social movement.

They also agreed to delete a requirement that sociology students "explain how institutional racism is evident in American society."

Educators have blasted the proposed curriculum for politicizing education. Teachers also have said the document is too long and will force students to memorize lists of names rather than thinking critically.

On May 13, American Library Association President Camila Alire wrote the Texas Education Agency to express the Association's "deep concern" about the new standards. "These changes appear to emphasize particular viewpoints while de-emphasizing or deleting competing viewpoints, at the expense of balance and accuracy," Alire wrote. "Because schools and school libraries need to prepare young persons to address the diversity of ideas and experiences they will encounter and to think critically for themselves, students have a right to accurate, balanced, comprehensive, and objective educational materials.

"If the changes proposed by the Texas State Board of Education are adopted, ALA fears that the new standards will not only impair the quality of history and social studies education in Texas and many other states but will also have a chilling effect on school libraries' ability to provide access to in-depth and diverse materials that promote free inquiry, critical thinking, and essential information literacy skills," Alire added. "For these reasons, we urge the Texas State Board of Education to approve the social studies standards as originally recommended by the expert reviewers."

Charging that the proposed revisions in Texas' high-school social studies curricula distort the historical record, more than 1,000 historians, most of them college history professors, wrote a letter in April to the Texas State Board of Education urging its members to put the brakes on the changes. Keith A. Erekson, an assistant professor of history at the University of Texas at El Paso, was one of the organizers of the letter campaign.

"We are concerned generally that the board is minimizing the role of women and ethnic minorities—especially

Burton Joseph

Burton Joseph, Vice President of the Freedom to Read Foundation and a legendary First Amendment attorney, died at his second home in San Francisco March 31. Joseph, a long-time member of the Freedom to Read Foundation Board, was a civil liberties lawyer in Chicago who took on tough First Amendment causes, notably the right of Nazis to march through Skokie, a Chicago suburb with a large Jewish population. He was 79 and maintained his primary residence in Evanston, Illinois.

The cause of death was brain cancer, his daughter Jody said.

In 1997 Joseph was counsel for the American Library Association in a suit brought by nearly twenty organizations against Attorney General Janet Reno and the Communications Decency Act. The act, passed by Congress a year earlier, made it a crime to display material on the Internet deemed "indecent" or "patently offensive" to children under 18. The Supreme Court overturned two provisions of the act, ruling that it violated the First Amendment by not allowing parents to decide what material was acceptable for their children; the term "patently offensive," the court said, had no legal definition.

Joseph developed an appetite for free-speech cases in the early 1960s while arguing the right of a client in Lake County, Illinois, to sell Henry Miller's novel *Tropic of Cancer*. After a series of cases in state courts, the Supreme Court ruled in 1964 that the book could not be banned.

"I got hooked," Joseph once told an interviewer. "I became a bleeding-heart, knee-jerk First Amendment lawyer. And I've never been sorry." He was also a early and vociferous proponent of women's and reproductive rights, prison and death penalty reform, and the rights of gays and lesbians.

While a partner in the Chicago law firm that became Joseph, Lichtenstein & Levinson, he did pro bono work for the Illinois branch of the American Civil Liberties Union. At the time, the branch was small, but in the 45 years he spent working with it and serving on its board, it developed into a large office with 25 employees.

Joseph defended demonstrators arrested at the Democratic National Convention in Chicago in 1968, and in the late 1970s he pressed the ACLU to represent the National Socialist Party of America, an offshoot of the American Nazi Party, in its legal battle to obtain permission to march in Skokie. A ruling by the Supreme Court in 1978 cleared the final legal obstacle, but the group decided to march in Chicago instead.

Burton Allen Joseph, known as Burt, was born on May 23, 1930, in Chicago and grew up in the Austin neighborhood. His parents ran a caretaking business for the city's Jewish cemeteries. He met his future wife, Babette, at his elementary school, where she was a monitor who collected absentee slips. He persuaded her to tear up the slips he was issued for skipping out to play pool.

They married in 1951. She survives him. In addition to his daughter Jody, of Dundas, Ontario, he is survived by two other daughters, Kathy, of Davis, Calif., and Amy, of San Francisco; a brother, Jack, of Chicago; and four grandchildren.

After graduating from DePaul University's law school in 1952, Joseph set up a practice in the Chicago Loop and soon began working on First Amendment cases for private individuals and with the ACLU. He was a founding member of Lawyers for the Creative Arts and in the 1980s served as the chairman of the Media Coalition, a First Amendment trade organization representing booksellers, magazine publishers, the Motion Picture Association and other groups.

He was the executive director of the Playboy Foundation, the charitable giving program of Playboy Enterprises, from 1969 to 1978, when he became chairman of its board. Honored by the ACLU in 1995, he was also awarded the 2008 Roll of Honor Award from the Freedom to Read Foundation. Reported in: *New York Times*, April 2. ☐

Hispanics—in a state where 48 percent of the students are Hispanic. We are also responding to the widespread media reporting of recommendations to change terminology, strike Thomas Jefferson from world history, and elevate Jefferson Davis," Erekson said. "Last week the board finally released a written draft of its proposals, and we are going over it closely and will present additional commentary soon."

Despite approval of the controversial new guidelines, change may be afoot at the Texas Board of Education, which now has ten Republicans and five Democrats. One Republican and one Democrat are retiring, and two other Republicans won't be returning because they lost in the state primary.

Analysts say the board currently has seven social conservatives who mainly run the show. They usually attract one or more of the more moderate Republicans to win a majority, and in some cases even attract Democrats.

Arguably, the most notable departures from the board in terms of a potential shift of the political dynamic are two outspoken conservatives: Don McLeroy and Cynthia Dunbar. McLeroy, a dentist from Bryan, Texas, who was the board's chairman until the state senate refused to reconfirm him in 2009, was narrowly defeated in the GOP primary by Thomas Ratliff, a moderate Republican (and Texas lobbyist). Dunbar—who authored a 2008 book, *One Nation Under God: How the Left Is Trying to Erase What Made Us Great*—is stepping down, and the candidate that she and virtually all the other staunch conservatives on the board

endorsed to replace her was defeated in a Republican runoff by Marsha Farney.

The role Farney chooses to play on the board could be critical to the future political dynamic. Some observers who aren't big fans of the current board hold out hope that she'll prove to be more of a moderate. Farney describes herself as a "common sense conservative."

Meanwhile, in what some called the biggest surprise of the primary, Republican Geraldine "Tincy" Miller, who is not considered part of the social conservative bloc, was defeated by Dallas English teacher George Clayton. Analysts predict that he will likely prove a very independent voice on the board.

The one Democrat who won't serve on the board next year is Rick Agosto, as he announced plans to retire. He apparently sided with the social conservatives on some key votes when the board previously took up science and English/language arts standards. His expected replacement in the safely Democratic district is Michael Soto, an English professor at Trinity University in San Antonio, who won the Democratic primary. By most accounts, Soto appears far less likely to align with conservatives. That said, despite any earlier alliances Agosto forged with conservatives, he ended up being one of the most outspoken critics on the state board of the final social studies standards. On the final day of deliberations in May, he grabbed a trash can and said that's where the new standards belong.

Texas political analyst Calvin Jillson from Southern Methodist University in Dallas said he thinks the changes to the board's makeup in 2010 could be important. "We will see some movement in a moderate direction," he said, even as he cautioned, "it will still be Republican-dominated, will be conservative."

David Anderson, a Texas lobbyist and a former curriculum director at the state education agency, seems to agree. "When one group on the board goes from a sure seven votes to a sure five, that does make a difference," he explained. "Each member of the board will be analyzing where he or she is relative to the entire board as they go into January 2011."

But Republican board member David Bradley isn't convinced that much will change. For one, he suggests that Marcia Farney could well prove a strong ally to the social conservatives. Also, Bradley believes that one of the incumbent Democrats, Rene Nunez, will face a serious challenge from Republican Carlos "Charlie" Garza.

"That is a swing district," he said. "I don't think anybody has paid attention to that one, but given the voters' dissatisfaction with Democrats in the upcoming November election, I think that district is in play." Stepping back, he concludes of the board in 2010: "It may be a loss of one [conservative], or it may hold even."

In any case, 2012 could bring still more change. Next year, the state is required to redraw political voting districts to reflect the latest U.S. Census data. And then in 2012, all 15 members of the board will be on the ballot.

Richard Murray, an expert on Texas politics at the University of Houston, said the changes resulting from redistricting are likely to disadvantage social conservatives. He explained that the areas with large concentrations of such constituents have seen little population growth, while urban and Hispanic areas have grown substantially.

"Big changes will have to be made on the board," he predicts. "This was kind of the final opportunity for the unusually strong socially conservative bloc."

For his part, lobbyist Anderson argues that the redistricting could create a new Democratic district representing Travis County, which includes Austin, a liberal island, but because of previous Republican redistricting has been sliced up and is currently represented by social conservatives on the board. Further, Anderson suggests that the district Ratliff will represent may become more strongly moderate, making it harder for a McLeroy-style Republican to challenge him. And Anderson says that the redistricting may open up one other district now seen as conservative-leaning such that a moderate Republican could succeed.

However, Jillson is not persuaded that redistricting will produce any meaningful change for the time being. "Over a period of decades, Hispanics will continue to increase their share of the population and register to vote at higher levels," he said. "But I don't expect a short-term impact from these demographic changes on these districts. . . . It's a longer-term process than just the raw demographics suggest." Reported in: Associated Press, May 21; *Chronicle of Higher Education* online, April 20: *Education Week* online, June 8. ☐

O'Neil named 2010 FTRF Honor Roll winner

Robert M. O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression at the University of Virginia (UVA), is the recipient of the 2010 Freedom to Read Foundation (FTRF) Roll of Honor Award.

O'Neil was the keynote speaker at FTRF's 10th Anniversary Gala in 1979. At the Foundation's 40th Anniversary Gala last summer, he presented the Thomas Jefferson Center's William J. Brennan Award for free expression to FTRF Executive Director Judith Krug (posthumously).

O'Neil received the FTRF Roll of Honor Award at the 2010 ALA Annual Conference during its Opening General Session June 26, at the Washington, D.C., Convention Center.

The Freedom to Read Foundation Roll of Honor was established in 1987 to recognize and honor those individuals who have contributed substantially to FTRF through adherence to its principles and/or substantial monetary support. ☐

Irvine responds to heckling incident

One of the more controversial campus speeches of the last academic year was discussed not so much for its content as for its repeated interruption. On June 14, the debates started again—with the news that University of California at Irvine was moving to suspend the Muslim Student Union on the campus for a year as punishment for organizing heckling during a speech by Israel's ambassador to the United States.

It is unusual for public universities to suspend political or religious groups—and the Muslim student group at Irvine promptly announced an appeal, claiming First Amendment rights were at risk. But the university investigation determined that the repeated interruptions not only violated Irvine's rules about acceptable protest, but were organized by the group. And the proposed punishment at Irvine, like the original incident, had all sides citing freedom of expression to justify their views.

Michael Oren, Israel's ambassador, spoke at Irvine in February. Appearances by Israeli officials regularly draw protests or spur campus debates, but what happened at Irvine went beyond pickets outside. Every few minutes during his talk a student would get up, shout something critical of Israel, be applauded by some in the audience, and be led away by police. Irvine officials asked those in the audience—both before Oren spoke and after the interruptions started—to let him speak. And the university condemned the heckling and started an investigation. The debate grew when some supporters of the Palestinian cause suggested that the heckling should be viewed as a legitimate form of free expression.

Irvine's investigative report—released in redacted form June 14—reviews what happened at the speech, and also how the protests were planned. Based on e-mail records and student testimony, the investigation found that the Muslim group organized a meeting to plan the interruptions, voted on the plan, distributed statements for protesters to read when shouting at the ambassador, and had plans in place for a variety of contingencies.

The disruptions were "planned, orchestrated, and coordinated in advance" by the Muslim Student Union, the investigation found. Part of the plan, the university found, was for the members of the Muslim Student Union to tell anyone who asked that the event had not been coordinated by the group.

As a result, the university inquiry found the student group guilty of "obstruction" of university activities and of "dishonesty" in providing false information about what happened. The inquiry recommended that the group be suspended from being recognized for one year and that its members be required to perform community service.

The punishment will not be imposed until after an appeals process. If the sanctions stand, losing recognition means that the Muslim group cannot receive student fees or reserve student facilities. However, members of the group would be allowed to assemble and speak out.

Jewish leaders, who have criticized Irvine in the past, praised the university for upholding the right of an Israeli speaker to be heard. One recent graduate of Irvine was quoted on the Orange County Jewish Federation's Web site as saying: "These results serve as a reminder that the First Amendment is a non-negotiable American value. The MSU must understand that they do not have the authority to control what students can and cannot hear on campus."

The Muslim Student Union issued a statement in which it reiterated its denials that it had organized the protests. "The students acted in their personal capacity," said the statement. The student union's incoming president, Asaad Traina, said: "Suspending the MSU would undoubtedly create a chilling effect and deprive Muslim students—both current and incoming—of a place where they can develop a sense of community with one another and with the broader UCI campus community. Depriving Muslim students a venue to associate jeopardizes their rights under the First Amendment and is an act of marginalization at a time when Muslim students and Muslim youth already feel besieged."

Adam Kissel of the Foundation for Individual Rights in Education said that he backed Irvine's stance. "Repeatedly disrupting a speech on campus, no matter how controversial the speaker, can only harm the efforts of a college to be a true marketplace of ideas," he said. "If UCI has conducted a fair and careful investigation, those who attempted to silence Ambassador Oren should face discipline for their actions."

John K. Wilson, whose blog College Freedom takes a strong free speech position, said he was opposed to collective punishment of student groups. "It's possible that there were innocent members of this group who will now suffer despite not being involved," he said. He said he could, however, see appropriate punishment being legitimate for the individuals who interrupted the talk. "It was a serious, multiple disruption of a speaker that certainly deserves condemnation and is subject to punishment," he said. Reported in: insidehighered.com, June 15. □

change on the horizon for British libel law?

Big Ben, the Tower of London, the Tate Modern: London's landmarks keep it popular with cultural tourists. But the city has a reputation for attracting less welcome visitors as well: libel tourists, eager to take advantage of British laws that favor plaintiffs in libel actions more than American laws do.

A few highly publicized cases involve American scholars and their publishers. Now some of those publishers

have stepped up efforts to obtain legal protections in the United States against judgments levied in foreign courts. And in Britain, groups concerned that libel actions have become too costly and repressive have started a movement to change the balance.

Some British legal experts, however, say the risk of libel tourism is not as great as news reports make it out to be.

The debate about protection affects scholarly publishers and authors as well as those who write and publish for a general audience. And it has gotten more complicated as the Internet puts more information within the reach of audiences far removed from the context in which a book or journal article was first published.

A few years ago, the phrase "libel tourism" meant little to most American authors and publishers. Two cases involving American academics helped put it on the legal map.

In 2007, Cambridge University Press agreed to pulp all copies of *Alms for Jihad*, by Robert O. Collins, then an emeritus professor of history at the University of California at Santa Barbara (he has since died), and J. Millard Burr, a retired State Department official. The press was responding to claims by a billionaire Saudi banker, Khalid bin Mahfouz, that the book libeled him by linking him to businesses suspected of channeling money to terrorists. Mahfouz had already won a judgment in Britain on similar grounds against another scholar in the United States, Rachel Ehrenfeld, director of the American Center for Democracy, over her book *Funding Evil*.

Since then at least one scholarly society, the College Art Association, has faced the risk of libel tourism. In 2008 the New York-based group settled rather than appear in British court to defend statements made in a review in its publication *Art Journal*.

The British are painfully aware of their country's reputation as the legal forum of choice for anyone who doesn't like what they read about themselves in a journal, book, or blog post. "I am not proud of reading, as I frequently do, that 'London is the libel capital of the world,'" the Lord Chief Justice of England and Wales told the Society of Editors' annual conference in November 2009. "I do not regard it as a badge of honor."

The United States, with its unique First Amendment culture, has been the source of some of the most stinging criticism. British libel law has also been knocked by a United Nations committee on human rights, which raised concerns that it inhibits "critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as libel tourism."

British groups representing publishers, writers, and researchers are worried as well, and not just because of the damage to Britain's international reputation. "We have in the U.K. some of the most, if not the most, draconian laws anywhere," says Simon Juden, who just stepped down as chief executive officer of the U.K. Publishers Association. "Of course this has had a chilling effect on what publishers are prepared to take."

Roughly equivalent to the Association of American Publishers, the group includes scholarly publishers such as Cambridge University Press as well as trade-oriented ones. It supports the libel-reform efforts being led by English PEN, the British branch of the international nonprofit organization dedicated to literature and human rights, and the Index on Censorship, a British group that promotes free expression.

Jonathan Heawood is English PEN's director. "The problem now is that the spirit of English libel law is not very conducive to free speech," he says. "I think most people broadly agree on that point, but the political challenge is to come up with reforms that are going to win cross-party backing."

PEN and the Index on Censorship have issued a report, "Free Speech Is Not for Sale," that lays out ten major concerns with British libel law. Among them: "In libel, the defendant is guilty until proven innocent," "English libel law is more about making money than saving a reputation," and "The law does not reflect the arrival of the Internet."

Britain still follows what's known as the Duke of Brunswick rule, which dates to the nineteenth century and holds that each fresh publication of libel can be actionable. In an age of electronic archives and digital downloads, that interpretation exposes authors and publishers to multiple legal actions over long periods of time.

"The multiple-publication rule, coupled with the global reach of the Internet, has contributed to the phenomenon of forum shopping and libel tourism," the PEN-Index report concludes. "A book that would once have been available only in the United States can now be bought here. An online publication or article can be downloaded anywhere. The number of cases that can be, and are, brought to the English courts has multiplied as a result."

Not everyone agrees with that view, though. Two legal experts, Alastair Mullis, of the University of East Anglia, and Andrew Scott, of the London School of Economics and Political Science, published a paper in January that contests some of the reformers' claims. Its title, "Something Rotten in the State of English Libel Law? A Rejoinder to the Clamour for Reform of Defamation," suggests their assessment of the situation.

Mullis and Scott agree that the time has come to do away with the multiple-publication rule and to control costs associated with libel actions. But they argue that "the public commentary on libel law has been remarkably one-sided, and in some respects dangerously oversimplified." For instance, they note, the reformers have ignored cases in which the current laws have helped underdogs—when big media corporations have been successfully sued by "relatively impecunious claimants," for instance.

The PEN-Index report seems to have captured the popular mood in Britain, however. English PEN and the Index on Censorship have joined forces with a third group, Sense

About Science, to form the Libel Reform Campaign. More than 49,000 people, including well-known writers and journalists, have signed the coalition's petition.

Their cause has been helped by a handful of high-wattage cases closely followed in the British press, most notably that of Simon Singh, a British science writer. Singh was sued for libel by the British Chiropractic Association after he wrote an article in *The Guardian* suggesting that certain chiropractic treatments for childhood ailments were not based on sound scientific evidence. The first court to hear the case found in favor of the association. This month an appeals court overturned that ruling. Singh hailed the outcome but made it clear that it came at a high price.

"It is extraordinary this action has cost £200,000 to establish the meaning of a few words," he said, speaking of the legal fees incurred in his defense. And the appeals court, in its ruling, judged that Singh's published comments were "expressions of opinion" and that for plaintiffs to ask the court to have a defendant prove such arguments "is to invite the court to become an Orwellian ministry of truth."

Such cases, along with the criticism from abroad, helped fire the interest of Parliament. A committee in the House of Commons has published two reports on press standards, privacy, and libel, the more recent in February 2010. It includes commentary and recommendations on libel tourism, the press's right to fair comment, and the high costs of libel actions. It cites anecdotal evidence submitted by Sense About Science indicating that the threat of libel actions has thrown a shadow over science-journal editors as well as science writers like Singh. Journal editors, the group says, back away from papers that might trigger costly libel actions.

But such claims have been hard to pin down and put numbers to. In January, Jack Straw, the minister of justice, convened a working group to look into libel reform. The group included people from all sides, including solicitors who handle libel cases, legal specialists from the BBC and *The Guardian*, and representatives of the groups leading the libel-overhaul campaign. It also included one scholar, Gavin Phillipson, a professor at Durham Law School.

"There was quite a lot of debate" among the working group's members about how big a problem libel tourism really is, he said in an interview. "It actually turned out to be hard to establish the fact. Very few cases come to trial in London" because so many get settled outside the courts.

Although he sees a need to amend the current system, Phillipson, taking a view more strongly held in Britain than in America, places a high value on preserving reputations as well as protecting what the British call "fair comment." If the Internet puts authors more at risk of libel suits, it also makes spreading libel easier. "Now anyone can be on to hundreds of American newspapers and journals in a matter of seconds," he said. "You can damage someone's reputation across many, many countries." (Interestingly, the appeals court in the Singh case noted that several British Commonwealth countries have begun to use the concept of "honest opinion" rather than "fair comment," a change that the court said "better reflects the realities" of public discussion and debate.)

The working group handed its report to Straw in March. All three major British parties have now said they support changing libel law.

American authors and publishers, for their part, are looking to the American system for even more protection. When Rachel Ehrenfeld, author of *Funding Evil*, was sued in Britain by Khalid bin Mahfouz, she did not go there to contest the suit, and Mahfouz won a $225,000 judgment against her. Instead Ehrenfeld sought help in U.S. federal court to block the British court's judgment. The U.S. court decided that it did not have jurisdiction, so in 2008 the New York State Legislature passed the Libel Tourism Protection Act, also known as "Rachel's Law." It gives New York courts jurisdiction over foreign litigants who win judgments against New York-based authors and publishers; those judgments can be enforced only if they meet the free-speech protections guaranteed by the U.S. and New York State constitutions.

Three other states—California, Florida, and Illinois—have passed similar laws, while Arizona, Hawaii, and New Jersey are working on their own versions, said Judith Platt, director of communications and public affairs at the Association of American Publishers and director of its Freedom to Read project.

For broader protection, the association wants a strong federal law in place. Last year Sen. Arlen Specter (D-PA) introduced the Free Speech Protection Act of 2009, citing Ehrenfeld's case as an example of the risks posed by libel tourism. It is being redrafted by the Judiciary Committee, said Platt. "If we can get a bill out, it's going to send an awfully strong statement that we're not looking to change laws in foreign jurisdictions, but we are extraordinarily protective of our own First Amendment rights, and rightly so," she said.

Could such a law really shelter American authors and publishers from legal storms that come from abroad? "Even if every problem in England was resolved, the problem wouldn't go away," Platt said. "An American publisher, an American author, can be sued anywhere in the world and is wide open for that kind of suit because of Internet sales."

What Congress can't do is legislate away the very real differences in how different countries approach freedom of expression. Heawood, of English PEN, points out that both Britain and the United States are anomalies in the realm of free speech. "Seen in one way, it's a real national embarrassment that U.S. legislatures and the Senate are considering laws to protect citizens against U.K. libel laws," he says. "But in another way, that shows how out of step American laws are with international laws. British libel law is unusually punitive on free speech, but American libel law is unusually liberal." Reported in: *Chronicle of Higher Education* online, April 18. ☐

censorship dateline

libraries

Longwood, Florida

Longwood parent Tina Harden was so disturbed by references to sex and drugs and foul language in the world of fictional teenager Jenny Humphrey that she is ignoring overdue notices and phone calls from her neighborhood library and its bill collector. Harden refuses to return several books connected to the *Gossip Girl* series that detail Humphrey's life, even though she's had them since 2008.

"If I turn them in, they will be put back into circulation and they'll be available for more young girls to read," said the mother of three, who keeps the four books hidden in a closet. "Some material is inappropriate for minors."

Harden said she doesn't want them banned, but she does want the library to put a warning label on the four titles—one in the *Gossip Girl* series by Cecily von Ziegesar, and three in a spin-off series called *It Girl*—and make them unavailable to minors. The library refused but has agreed to re-shelve them in the adult-reading section.

"If we denied access to this particular title, it would be censoring," said Jane Peterson, the county's library services manager.

That's not good enough for Harden, who said that as a taxpayer she should have a say in which books land on the libraries' shelves. "They're supposed to be public servants," she said.

The libraries have multiple copies of the novels in the series. If her library privileges hadn't been revoked, Harden said she would try to check them all out. She owes about $85 in fines.

Two years ago, Harden's daughter, then 13, handed the stack of books to her mother at the checkout at Seminole County's Northwest Branch library in Lake Mary. Harden later flipped through one and saw numerous curse words and terms such as "stoned" and "marijuana," and a reference to sleeping with a teacher. "The whole book was filled with everything I don't want my daughter to do or be," she said.

The library noted that the series is popular among young adults, and it has an obligation to stock books in demand. One title in the series, *Notorious*, was checked out 129 times from late November to late April.

Harden questioned how the library can enforce an Internet policy that restricts access to certain content but not place limitations on books. Reported in: *Orlando Sentinel*, May 6.

Melbourne Beach, Florida

"The cursing. The frontal nudity. The one-person-in-bed-with-another. The child-trafficking. It's one bad scene after another."

That's how Melbourne Beach resident Dot Uhl described *The Informers*, a DVD she checked out from her public library on Ocean Avenue. So the shocked 69-year-old wrote a letter to Brevard County Library Services Director Cathy Schweinsberg. Uhl, who does not consider herself a prude, complained there is no written policy to prevent children from checking out R-rated movies.

"Is this really where you think the Brevard County library system should be ranked—lower than the restrictions of Blockbuster and all of the movie theaters?" she asked.

Uhl's letter triggered library debate during public meetings in Viera, Titusville and Melbourne Beach. Officials may "add teeth" to statements of parental/guardian responsibility for juvenile library cards, Schweinsberg said. The Brevard County Commission will have the final say.

Current county code—specifically, Policy BCC-73, which covers patrons' objections to library materials—does not restrict the check-out of movies based on age or subject matter. Commissioner Trudie Infantini and Pat Pasley, her appointee to the Melbourne Beach Library Board, are leading the charge to change this.

Pasley told commissioners *The Informers* includes an inappropriate scene featuring "a nude adult in bed with nude adolescent children."

"What disturbed me the most was when I questioned the library if children under 17 were able to check out this movie. I was told, 'We don't age-discriminate, and it's the parents' responsibility to monitor their children," Pasley said.

Despite Infantini's call to start "carding" teenagers, the other four commissioners decided to let library advisory boards deliberate the matter first before taking any action.

Commissioner Andy Anderson remarked that the raunchy 1999 movie *American Pie*—available on DVD at the South Mainland and Port St. John libraries—is "a modern version of *Porky's*." But he said other R-rated fare is more difficult to classify. "*Saving Private Ryan*. Very rough movie. Rough for me, as an adult. But it's a historical-context movie," Anderson said. "So, I don't know how we handle those."

Adding complexity to the debate: Schweinsberg said some movies have DVD packages displaying an R, PG-13 or other rating. Others do not.

Pasley said she polled 49 Florida county library systems, and 30 have an R-rated DVD policy. Some districts ban them outright. But Mike Cunningham, chair of the South Mainland Library Advisory Board, said he was troubled by the DVD debate. He said Brevard follows the guidelines of the Florida Library Association and American Library Association.

"Could a child or a young person get ahold of something negative? Yes. Has it happened? If you read your staff report, there have been only two incidents that I know of in the last 15 years where that's happened," Cunningham—who has five children and 13 grandchildren—told commissioners. "That's a pretty good track record," he said.

More than 3.5 million patrons use Brevard's 17 libraries every year. Commissioner Robin Fisher said he has a problem altering long-standing policy because of an isolated complaint. "How do you manage that? I know how I manage it in my household. You're not allowed to watch X-rated movies until you're a certain age—and if you do, I'm going to whip your butt," Fisher said.

Terri Jones, a former county attorney, is a member of the Brevard County Library Advisory Board. She suggested using checkout desk computer software to limit children's access to adult-oriented movies and music.

However, in a letter to WMMB-AM talk show host Bill Mick, a library critic, Jones warned it is impossible to create a rating system to accommodate all possibilities in the system. "I, for one, do not want the government to decide what my child can or should read," Jones wrote.

During the previous two fiscal years, Brevard County Library Services spent $3.5 million buying all types of media, including books, Finance Manager Frank Vestal said. Combined, one-fourth of this sum was spent on DVDs and CDs, Vestal said. This year's media budget was reduced 46 percent because of budgetary constraints. Library Services Director Cathy Schweinsberg warned the media budget "may come to a screeching halt" next year. Reported in: *Florida Today*, April 23.

Mount Holly, New Jersey

A Burlington County school board voted May 4 to pull a book depicting teenage homosexuality from its high school library shelves after protests from a local conservative group. The Rancocas Valley Board of Education, which oversees a regional high school serving the Mount Holly

area, was concerned that the book was too graphic for children, said school board member Jesse Adams.

"We felt, from an obscenity perspective, there were some things our children didn't need to see," he said. "We don't allow our children to curse in school, and we don't think this is something we should be promoting in the school." The decision drew criticism from the majority of parents, students, and librarians assembled at the meeting.

"It's a parent's responsibility to monitor what their children are reading, not to tell other children what they can and cannot read," said Eileen Cramer, a mother and graduate of the high school.

The controversy began at a school board meeting in March when a group of 18 residents, who later identified themselves as part of the 9.12 Project, a nationwide government watchdog network launched by the talk-radio and television personality Glenn Beck, called for the banning of three books, all dealing with teenage sexuality and issues of homosexuality, said Superintendent Michael Moskalski.

The challenged books are *Revolutionary Voices: A Multicultural Queer Youth Anthology*; *Love and Sex: Ten Stories of Truth*; and *The Full Spectrum: A New Generation of Writing About Gay, Lesbian, Bisexual, Transgender, Questioning, and Other Identities*.

The board elected to review the volumes after consulting with its attorney, the South Jersey law firm Parker McCay. Moskalski said the firm advised that the school had the legal authority to ban books because of obscenity but not on political grounds. At the meeting, the school board voted unanimously to ban *Revolutionary Voices* but elected to allow the other two books to remain in the library.

Beverly Marinelli, a member of the local 9.12 group, applauded the decision but questioned why the books were allowed into the library in the first place. "Where is the oversight on this?" she asked during the meeting.

The proposed ban carried with it political undertones. The national 9.12 group has called for the resignation of Kevin Jennings as assistant deputy secretary for the Office of Safe and Drug-Free Schools in the U.S. Department of Education. Jennings, who is openly gay, is the former head of the Gay, Lesbian and Straight Education Network.

The group's political affiliations clearly rankled parents and teachers at Rancocas Valley, who criticized the school board for bowing to special interests. "It would be convenient if we could look at these books and simply discuss whether or not they are obscene. However, we cannot overlook that the motivation behind the request to remove these titles has other social and political implications," said Dee Venuto, head librarian at the Mount Holly high school.

In past weeks, the school district has received correspondence offering legal advice from national groups including the American Library Association and the Lambda Legal Defense and Education Fund, a civil-rights group representing gays, lesbians, and people with HIV/AIDS, Moskalski said.

"There are undoubtedly GLBTQ [gay, lesbian, bisexual, transgendered, and questioning] students at Rancocas Valley High School, regardless of whether they are openly recognized. Removing any of these titles would send a clear message to those students that they are the objects of social disapproval—different, vulnerable, and marginal—whose needs for information of particular relevance to their lives are not respected," wrote the directors of a collection of organizations to the school's board. The letter, the signatories to which included the National Coalition Against Censorship, the National Council of Teachers of English, American Booksellers Foundation for Free Expression, the Association of American Publishers and PEN America, added that there was "no question that these books are not obscene."

"No one has to read something just because it's on the library shelf," the letter continued. "No book is right for everyone, and the role of the library is to allow students to make choices according to their own interests, experiences, and family values . . . Even if the books are too mature for some students, they will be meaningful to others."

Lambda Legal, a civil rights group representing gays, lesbians, and people with HIV/AIDS, wrote that removing the book "undermines the school's obligation and ability to protect students regardless of sex, sexual orientation, or gender identity."

The book's editor, Amy Sonnie, pointed to a letter from a 15-year-old boy, who said that on reading the volume he was relieved to discover "that there were other people out there who shared elements of my identity."

"Queer students may not feel safe speaking up when LGBTQ books are challenged," said Sonnie. "But, they certainly deserve a chance to discover the 'diversity of voices' that make balanced library collections so crucial for the health of our communities and democracy."

Maryann Lange, a mother of five in Lumberton with two sons at the high school, decided to read the books after hearing about the proposed ban. She said that for the most part, the stories and material were sensible and in good taste, the sort of thing that might help teenagers struggling to figure out their sexuality. But certain sections of *Revolutionary Voices*, including a piece about a "gay porn star," Lange said, were distasteful and "without educational value."

"There's a lot of great stories in this book, but the trash they included," she said. "I spoke about it with my son's friend [who is gay] about how we could solve this. Maybe put it in an over-18 section."

One element of *Revolutionary Voices* that drew considerable attention in Burlington County was a drawing of one man bent at the waist with another man standing behind him. Most took that as a depiction of a sexual act. The author of the book, Amy Sonnie of Oakland, Calif., said that the drawing was actually a stock image of one man hiking a football to another.

9.12 organizer Gerry Grabinski said the group was

already looking at petitioning for the removal of the same book from the Lenape Regional High School District, which with four high schools and about 7,500 students is the county's largest school district.

Lenape Superintendent Emily Capella said members of the group had addressed the school board but had yet to file a petition. In addition, 9.12 members are campaigning for such changes as an alternate teaching of global warming–the state considers Al Gore's documentary film, *An Inconvenient Truth*, an educational resource–and a requirement that high schools teach civics as a stand-alone class. Reported in: *Philadelphia Inquirer*, May 5, 6; *The Guardian*, May 10.

Fond du Lac, Wisconsin

Parent Ann Wentworth is requesting the Fond du Lac School District remove *Forever in Blue: the Fourth Summer of the Sisterhood*, by Ann Brashare, from the library at Theisen Middle School, where her daughter attends. *Forever in Blue* is the fourth and final novel in the author's "Sisterhood" series. The story concludes the adventures of four girls who share a pair of "magical" pants that fit each one of them perfectly, despite their vastly different shapes and sizes, according to the author.

The school district's reconsideration committee was also set to consider another challenge submitted by Wentworth to *Get Well Soon*, by Julie Halpern.

Wentworth, who has been crusading to remove from the middle schools books that contain what she feels is inappropriate subject matter for children in that age group, appeared before the district reconsideration committee to state her case. "Some (of the characters in the book) are sexually active, and alcohol is part of their recreation. I pointed out that in a community such as ours, where we have the Drug Free Task Force attempting to address and eradicate underage drinking, it seems very contradictory to have books in our school libraries that are promoting that very thing," Wentworth told the committee.

The Fond du Lac parent had just completed the lengthy reconsideration process with *One of Those Hideous Books Where the Mother Dies*, by Sonya Sones. In a final appeal, Superintendent James Sebert upheld the committee's decision to keep the book available to students at Theisen (see page 176).

Wentworth is also circulating a petition asking the district to allow a committee to select library books instead of just the librarian.

Theisen media specialist Kathy Prestidge said she strives to create a balanced book collection representing a variety of reading levels, interest levels and maturity levels. "The media specialist selects materials based on professional resources, book reviews, past experience and knowledge, student and parent suggestions, staff recommendations and discussions with other librarians," Prestidge said. "Materials are also judged according to their overall merit and not by individual phrases or selections taken out of context. We feel that our collection includes materials which represent the cultural diversity and pluralistic nature of American society as well as reflecting the problems and attitudes of our world." Reported in: *Fond du Lac Reporter*, May 17.

schools

Stockton, California

The Stockton School district voted to ban a book from the schools in April because of violence, language and some sexual content. The book is *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie, which follows the story of a teenager from an Indian reservation as he tries to get an education from a white school. A parent protested and took his complaint to the board. Board Members agreed and called for the book to be removed from the high school. Many classes had already finished the book, but at least one class was still reading it. Superintendent Dr. Vicki Sandberg said this was the second book the district has banned in her five years there. Reported in: kspr.com, April 16.

Richland, Washington

A novel about a 9-year-old boy dealing with the death of his father on 9/11 has sparked a months-long discussion in the Richland School District about how far teachers need to go to inform parents about a book's content. The novel that sparked the discussion is *Extremely Loud and Incredibly Close*, by Jonathan Safran Foer. The best-seller tells the story of Oskar Schell, a young boy whose father died in the 2001 World Trade Center attacks. The book contains profanity, sex and descriptions of violence.

It was among the titles students could choose to read in a 10th-grade honors language arts class at Hanford High. It was approved for the classroom under the policy the district had in place at the time. Last school year, the parents of a student in the class read through the book and found language and content they felt was inappropriate. They took their concerns to the school board, saying that they—and other parents—weren't being made aware that books offered in class might contain such content.

The board has been discussing the matter ever since, hearing from parents, students, teachers and administrators. One significant change already has been made. Under old policy, novels such as *Extremely Loud*—which are supplemental to the curriculum—were OK'd through a school-based process. Committees within the schools would discuss and settle on titles, with the principals giving approval. By contrast, core curriculum materials—like textbooks that all students use—passed through a district-wide Instructional Materials Committee, or IMC, made up of teachers, administrators and parents.

In recent months, the board has changed the process to require novels like *Extremely Loud* also go through the

IMC. The board also expanded parent presence on that committee—from four parents and/or community members to seven. The committee has 15 members.

"The intent of that change was to ensure the opportunity for public and parents to comment on anything we're putting into the high school classrooms," School Board President Rick Jansons said.

The more challenging question has been what to do about novels with potentially objectionable content. David Garber of West Richland, the father who brought concerns about *Extremely Loud* to the school board, has asked that it be noted on course syllabi if a book contains profanity, sexual situations and violence. He said he likes the idea of flagging books because parents need to be clearly warned about potentially objectionable content.

"Parents need to know what's going on in the classroom. They need to know what's being offered to their children before it's given to their children," he said. "The current system doesn't really do that. That's the bottom line."

Some other parents who spoke at a recent school board meeting agreed. However, other people—including several teachers—have said they're uncomfortable with the idea of flagging or rating books. The problem, they said, becomes, what is the standard? A word or theme that is offensive to one person might not be to another.

"My judgment of what needs to be flagged might be different than yours. I don't know how you could establish a commonly accepted criteria," said Jim Deatherage, a longtime Richland High English teacher.

Before Deatherage presents novels in class, he talks to students about the content and asks them to avoid books their parents wouldn't approve of, he said. Deatherage also allows them to choose alternative books and welcomes hearing from parents, he said.

Other teachers do the same. Teachers said they list in their syllabi the titles of the books offered in class and encourage parents to contact them with questions. The district also has an opt-out policy in which students or parents who feel uncomfortable with a book can pick a different one with no penalty. Those safeguards are sufficient, teachers said.

The issue has come up before in the district. In the late 1990s, some parents objected to the content of a handful of novels approved for high school classrooms, including Margaret Atwood's *The Handmaid's Tale*. The parents asked the board to remove the books, and there was lengthy discussion.

Nancy Smith, an English teacher at Hanford High, chose *Extremely Loud* for her 10th-grade honors class. It was one of several books students could pick from for a unit on how historical events are treated in literature. She said she's heard from parents who read the book and thought it was a good pick for the class, and also from students who liked it and felt they learned from it. In her view, literature is meant to provoke discussion and teach the reader about the lives of others. She said she wants students to experience a broad range of challenging literature.

Garber said he isn't trying to force his standards on others but wants a better system for keeping parents informed. He said he's happy with the school district overall and feels his children are being well-educated. "I just have this one area where I think (the district) needs tuning up," he said. Reported in: *Tacoma News-Tribune*, April 12.

periodicals

Laramie, Wyoming

Laramie County Community College filed for and got a temporary restraining order May 21 against the *Wyoming Tribune Eagle*, blocking publication of a story about a report that campus officials want kept out of the public eye. The report is about LCCC President Darrel Hammon's performance on a 2008 student trip to Costa Rica, according to testimony at a recent public hearing.

The *Tribune Eagle* has a copy of the report, which it obtained from an anonymous source, but the ten-day temporary restraining order prevents the newspaper from disclosing the contents of the report. According to court documents, LCCC says it is concerned that publication of the story containing information from the report could constitute a violation of the Federal Education Rights and Privacy Act, or FERPA.

"If the story is published, LCCC risks losing millions of dollars in federal funding, which could seriously and irreparably harm LCCC's ability to provide educational programs to its students," the complaint read.

Bruce Moats, an attorney for the newspaper, said this is prior restraint, a form of censorship that is "presumptively unconstitutional unless there are some extraordinary circumstances." He brought up the case of the Pentagon Papers, in which the U.S. government sought to prevent the *New York Times* and *Washington Post* from publishing documents about the Vietnam War considered classified and a potential threat to national security.

"That's the kind of thing that they considered there and still (the U.S. Supreme Court) said you can't prevent the publishing of materials and even state secrets," Moats said.

READ BANNED BOOKS

Moats asked the judge to release two pages already posted on the Internet and also to allow publication of the full report without any names of students—which the newspaper had planned to do before the restraining order. After the hearing, Moats said the paper shouldn't be restricted from publishing something it legally obtained.

"The delivery of the 16 pages to (the newspaper) is already a violation of FERPA—if the college is correct," he said. "The harm would happen regardless if there was any publication of it."

But Moats said he doesn't believe the college is correct and that it can take steps to avoid a FERPA violation.

Previously, the *Wyoming Tribune Eagle* requested that LCCC release the report. That request was denied by the school's administration. However, the LCCC Board of Trustees voted 6–1 to submit the report for a judge to review in chambers to see which parts, if any, may violate FERPA. Reported in: *Wyoming Tribune Eagle*, May 22.

music video

New York, New York

Within a day of its splashy and widely discussed debut on the Web, the video for M.I.A.'s song "Born Free" was in some instances removed from YouTube and in some instances labeled with an age restriction. The video, made for the first single of M.I.A.'s coming album and directed by Romain Gavras, the son of legendary film Greek film director Costa-Gavras, depicts an unspecified military force, with some members wearing American flags on their uniforms, rounding up red-headed men from an apartment complex and taking them to a desert to be tortured and executed.

When it was released April 26 "Born Free" quickly drew excited responses from around the Web: MTV wrote that it "depicts the kind of things that most nations—including the U.S., which is portrayed as the aggressor in the clip—often pretend don't happen" and "it does so in an unflinchingly, unapologetically real way," and Spinner.com wrote: "If you're into cinematic displays of violence that make overt political statements about the way state-run armed forces control people, then this one's for you."

The video can still be viewed on M.I.A.'s official Web site, miauk.com.

In its community guidelines, YouTube advises that videos can be taken down from the site for violations like excessive violence, and they can be flagged by users if they believe videos are in violation of these guidelines. YouTube declined to say if any versions of the M.I.A. video were taken down due to its violent content. Reported in: *New York Times*, April 27. □

2009 most challenged . . . from page 145)

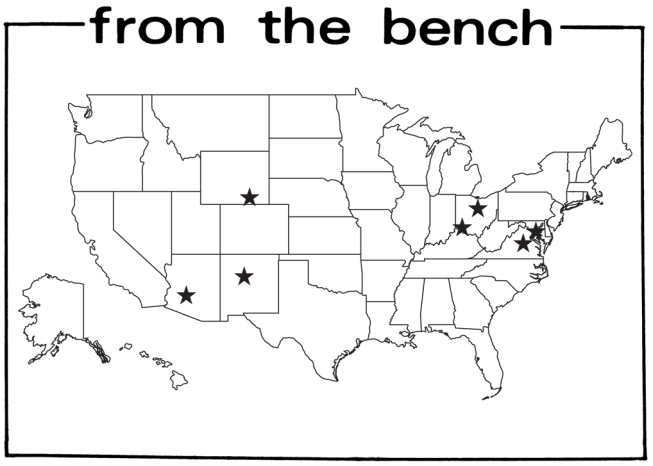
5. *Twilight* (series), by Stephenie Meyer. Reasons: Sexually Explicit, Religious Viewpoint, Unsuited to Age Group.
6. *Catcher in the Rye*, by J.D. Salinger. Reasons: Sexually Explicit, Offensive Language, Unsuited to Age Group.
7. *My Sister's Keeper*, by Jodi Picoult. Reasons: Sexism, Homosexuality, Sexually Explicit, Offensive Language, Religious Viewpoint, Unsuited to Age Group, Drugs, Suicide, Violence.
8. *The Earth, My Butt, and Other Big, Round Things*, by Carolyn Mackler. Reasons: Sexually Explicit, Offensive Language, Unsuited to Age Group.
9. *The Color Purple*, by Alice Walker. Reasons: Sexually Explicit, Offensive Language, Unsuited to Age Group.
10. *The Chocolate War*, by Robert Cormier. Reasons: Nudity, Sexually Explicit, Offensive Language, Unsuited to Age Group.

Seven titles dropped from the list, including: *His Dark Materials* Trilogy (Series), by Philip Pullman (Political Viewpoint, Religious Viewpoint, Violence); *Scary Stories* (Series), by Alvin Schwartz (Occult/Satanism, Religious Viewpoint, Violence); *Bless Me, Ultima*, by Rudolfo Anaya (Occult/Satanism, Offensive Language, Religious Viewpoint, Sexually Explicit, Violence); *Gossip Girl* (Series), by Cecily von Ziegesar (Offensive Language, Sexually Explicit, Unsuited to Age Group); *Uncle Bobby's Wedding*, by Sarah S. Brannen (Homosexuality, Unsuited to Age Group); *The Kite Runner*, by Khaled Hosseini (Offensive Language, Sexually Explicit, Unsuited to Age Group); and *Flashcards of My Life*, by Charise Mericle Harper (Sexually Explicit, Unsuited to Age Group).

Also new this year is an updated list of the top 100 Most Frequently Challenged Books of the Decade (2000–2009). Topping the list is the *Harry Potter* series by J.K. Rowling, frequently challenged for various issues including occult/satanism and anti-family themes. A complete listing can be found at http://tinyurl.com/top100fcb.

For more information on book challenges and censorship, please visit the ALA Office for Intellectual Freedom's Banned Books Week Web site at www.ala.org/bbooks.

The Office for Intellectual Freedom is charged with implementing ALA policies concerning the concept of intellectual freedom as embodied in the Library Bill of Rights, the Association's basic policy on free access to libraries and library materials. The goal of the office is to educate librarians and the general public about the nature and importance of intellectual freedom in libraries. □



U.S. Supreme Court

In a case pitting free speech against national security, the Supreme Court on June 21 upheld a federal law that makes it a crime to provide "material support" to foreign terrorist organizations, even if the help takes the form of training for peacefully resolving conflicts.

Chief Justice John G. Roberts Jr., writing for the majority in the 6-to-3 decision, said the law's prohibition of providing some types of intangible assistance to groups the State Department says engage in terrorism did not violate the First Amendment.

The decision was the court's first ruling on the free speech and associations rights of Americans in the context of terrorism since the September 11 attacks. The law has been an important tool for prosecutors: Since 2001, the government says, it has charged about 150 defendants for violating the material-support provision, obtaining roughly 75 convictions.

The court's majority said deference to the other branches was called for given the threat posed by terrorism. "At bottom," Chief Justice Roberts wrote, "plaintiffs simply disagree with the considered judgment of Congress and the executive that providing material support to a designated foreign terrorist organization—even seemingly benign support—bolsters the terrorist activities of that organization."

Justices John Paul Stevens, Antonin Scalia, Clarence Thomas, Anthony M. Kennedy and Samuel A. Alito Jr. joined the majority decision.

The material support law bars not only contributions of cash, weapons and other tangible aid but also "training," "personnel," and "expert advice or assistance."

Justice Stephen G. Breyer took the unusual step of summarizing his dissent from the bench. He said the majority had drawn a false analogy between the two kinds of assistance.

"Money given for a charitable purpose might free up other money used to buy arms," Justice Breyer said from the bench. But the same cannot be said, he went on, "where teaching human rights law is involved."

The decision was a victory for Solicitor General Elena Kagan, who argued the case in February and whose confirmation hearings for a seat on the court were scheduled to start the following week. But Chief Justice Roberts said the government had advanced a position that was too extreme and did not take adequate account of the free speech interests at stake.

"The government is wrong," the chief justice wrote, "that the only thing actually at issue in this litigation is conduct" and not speech protected by the First Amendment protection. But he went on to say the government's interest in combating terrorism was enough to overcome that protection.

In his written dissent, which was joined by Justices Ruth Bader Ginsburg and Sonia Sotomayor, Justice Breyer said the majority had been too credulous in accepting the government's argument that national security concerns required restrictions on the challengers' speech and had "failed to insist upon specific evidence, rather than general assertion."

The law was challenged by, among others, Ralph D. Fertig, a civil rights activist and former administrative law judge who has said he wanted to help a militant Kurdish group in Turkey find peaceful ways to achieve its goals.

Fertig said the decision, which effectively ended twelve years of litigation, was a grave disappointment. "This is a very dark day in the history of the human rights struggle to assist groups overseas that are being oppressed," he said.

The other plaintiffs in the case were a doctor and six domestic organizations. Some of them said they sought to help the Liberation Tigers of Tamil Eelam, a group that seeks to create an independent Tamil state in Sri Lanka.

Both groups, along with Hamas, Hezbollah, the Khmer Rouge and some thirty others, were designated as terrorist organizations by the State Departmant. The United States says the Kurdish group, sometimes called the P.K.K., has engaged in widespread terrorist activities, including bombings and kidnappings. The Tamil group, the government said, was responsible for a 1996 bombing that killed 100 people and injured more than 1,400, making it the most deadly terrorist incident in the world that year.

The plaintiffs said they sought to aid only the two groups' nonviolent activities. For instance, they said, they

wanted to offer training in how to use international law to resolve disputes peacefully and "how to petition various representative bodies such as the United Nations for relief." That sort of help, they said, was speech protected by the First Amendment.

David D. Cole, a lawyer for the plaintiffs with the Center for Constitutional Rights, said the court's rejection of that argument was disappointing. "This decision basically says the First Amendment allows making peacemaking and human rights advocacy a crime," Cole said.

The United States Court of Appeals for the Ninth Circuit, in San Francisco, ruled in 2007 that bans on training, service and some kinds of expert advice were unconstitutionally vague. But it upheld the bans on personnel and expert advice derived from scientific or technical knowledge.

All nine justices said the appeals court was wrong to strike down the law as too vague. They differed, though, about the role the First Amendment had to play in analyzing the law and whether it should be read to apply only where a defendant intended to support a designated group's terrorist activities.

Chief Justice Roberts emphasized what he said was the limited reach of the decision, which applies only to activities coordinated with the designated groups. Other sorts of speech remain protected, he said.

"Plaintiffs may say anything they wish on any topic," he wrote. "They may speak and write freely about" the Kurdish and Tamil groups, "the governments of Turkey and Sri Lanka, human rights and international law." Indeed, he added, the plaintiffs are free to become members of the two groups.

What they cannot do it make a contribution to a foreign terrorist organization, even if that contribution takes the form of speech. "Such support," he wrote, "frees up other resources within the organization that may be put to violent ends," "helps lend legitimacy to foreign terrorist groups" and strains "the United States' relationships with its allies."

Justice Breyer, in dissent, said the activities at issue "involve the communication and advocacy of political ideas and lawful means of achieving political ends." It is elementary, he went on, that "this speech and association for political purposes is the kind of activity to which the First Amendment ordinarily offers its strongest protection."

The majority opinion said it expressed no view about whether Congress could bar assistance to domestic groups. But Justice Breyer said he feared the decision in the case, *Holder* v. *Humanitarian Law Project*, had implications for all sorts of speech said to threaten national security. The majority's logic, he said, amounts to "a rule of law that, contrary to the Constitution's text and First Amendment precedent, would automatically forbid the teaching of any subject in a case where national security interests conflict with the First Amendment."

"The Constitution does not allow all such conflicts to be decided in the government's favor," Justice Breyer wrote. Reported in: *New York Times*, June 21.

In a major First Amendment ruling, the Supreme Court on April 20 struck down a federal law that made it a crime to create or sell dogfight videos and other depictions of animal cruelty. Chief Justice John G. Roberts Jr., writing for the majority in the 8-to-1 decision, said that the law had created "a criminal prohibition of alarming breadth" and that the government's aggressive defense of the law was "startling and dangerous."

The decision left open the possibility that Congress could enact a narrower law that would pass constitutional muster. But the existing law, Chief Justice Roberts wrote, covered too much speech protected by the First Amendment.

It has been more than a quarter-century since the Supreme Court placed a category of speech outside the protection of the First Amendment. The Court's resounding and lopsided rejection of a request that it do so, along with its decision in *Citizens United* in January—concluding that corporations may spend freely in candidate elections—suggest that the Roberts Court is prepared to adopt a robustly libertarian view of the constitutional protection of free speech.

The decision arose from the prosecution of Robert J. Stevens, an author and small-time film producer who presented himself as an authority on pit bulls. He did not participate in dogfights, but he did compile and sell videotapes showing the fights, and he received a 37-month sentence under a 1999 federal law that banned trafficking in "depictions of animal cruelty."

Dogfighting and other forms of animal cruelty have long been illegal in all fifty states. The 1999 law addressed not the underlying activity but rather trafficking in recordings of "conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded or killed." It did not matter whether the conduct was legal when and where it occurred so long as it would have been illegal where the recording was sold. Some of Stevens's videos, for instance, showed dogfighting in Japan, where the practice is legal.

The government argued that depictions showing harm to animals were of such minimal social worth that they should receive no First Amendment protection at all. Chief Justice Roberts roundly rejected that assertion. "The First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter or its content," he wrote.

The chief justice acknowledged that some kinds of speech—including obscenity, defamation, fraud, incitement and speech integral to criminal conduct—have historically been granted no constitutional protection. But he said the Supreme Court had no "freewheeling authority to declare new categories of speech outside the scope of the First Amendment."

Chief Justice Roberts rejected the government's analogy to a more recent category of unprotected speech, child pornography, which the court in 1982 said deserved no

First Amendment protection. Child pornography, the chief justice said, is "a special case" because the market for it is "intrinsically related to the underlying abuse."

Having concluded that the First Amendment had a role to play in the analysis, Chief Justice Roberts next considered whether the 1999 law swept too broadly.

The law was enacted mainly to address what a House report called "a very specific sexual fetish"—so-called crush videos. "Much of the material featured women inflicting the torture with their bare feet or while wearing high-heeled shoes," according to the report. "In some video depictions, the woman's voice can be heard talking to the animals in a kind of dominatrix patter."

When President Bill Clinton signed the bill, he expressed reservations, prompted by the First Amendment, and instructed the Justice Department to limit prosecutions to "wanton cruelty to animals designed to appeal to a prurient interest in sex."

The law, said Wayne Pacelle, the president of the Humane Society of the United States, "almost immediately dried up the crush video industry." But prosecutions under the law appear to have been pursued only against people accused of trafficking in dogfighting videos.

The federal appeals court in Philadelphia struck down the law in 2008 in Stevens's case, overturning his conviction. The high court's decision in *United States* v. *Stevens* affirmed the appeals court's ruling.

In it, Chief Justice Roberts said the law was written too broadly. Since all hunting is illegal in the District of Columbia, for instance, he said, the law makes the sale of magazines or videos showing hunting a crime there. "The demand for hunting depictions exceeds the estimated demand for crush videos or animal fighting depictions by several orders of magnitude," he wrote.

The law contains an exception for materials with "serious religious, political, scientific, educational, journalistic, historical or artistic value." Those exceptions were insufficient to save the statute, the chief justice wrote. "Most hunting videos, for example, are not obviously instructional in nature," he said, "except in the sense that all life is a lesson."

Justice Samuel A. Alito Jr. dissented, saying the majority's analysis was built on "fanciful hypotheticals" and would serve to protect "depraved entertainment." He said it was implausible to suggest that Congress meant to ban depictions of hunting or that the practice amounted to animal cruelty.

Chief Justice Roberts replied that Justice Alito "contends that hunting depictions must have serious value because hunting has serious value, in a way that dogfights presumably do not." But, he went on, the 1999 law "addresses the value of the depictions, not of the underlying activity."

The exchange was unusual, as Chief Justice Roberts and Justice Alito are almost always on the same side. In the last term, the two justices, both appointed by President George W. Bush, agreed 92 percent of the time, more than any other pair of justices.

Justice Alito said the analogy to child pornography was a strong one. The activity underlying both kinds of depictions are crimes, he wrote. Those crimes are difficult to combat without drying up the marketplace for depictions of them and both kinds of depictions contribute at most minimally to public discourse, he added.

The Freedom to Read Foundation filed an *amicus curiae* brief in suport of Stevens. A number of news organizations also filed a brief urging the court to rule in favor of Stevens.

Chief Justice Roberts concluded his majority opinion by suggesting that a more focused law "limited to crush videos and other depictions of extreme animal cruelty" might survive First Amendment scrutiny.

Pacelle, of the Humane Society, called for a legislative response to the ruling. "Congress should within a week introduce narrowly crafted legislation," he said, "to deal with animal crush videos and illegal animal fighting activities." Reported in: *New York Times*, April 21.

A California police department did not violate the constitutional privacy rights of an employee when it audited the text messages on a pager the city had issued him, the Supreme Court unanimously ruled June 17. The decision represented only a preliminary effort to define public employees' Fourth Amendment rights in the digital era, and Justice Anthony M. Kennedy, writing for the court, took pains to say that it was narrow and closely tied to the facts.

Still, the decision put government employees on notice that electronic communications on devices provided to them may not be subject to the Fourth Amendment's protection against unreasonable searches, as long as their employers have "a legitimate work-related purpose" for inspecting the communications.

Justice Kennedy said the court was uncomfortable fashioning comprehensive legal rules, given the pace of technological and cultural change.

"The court must proceed with care when considering the whole concept of privacy expectations in communications made on electronic equipment owned by a government employer," he wrote in a part of the opinion joined by every member of the court except Justice Antonin Scalia.

"Cellphone and text message communications are so pervasive that some persons may consider them to be essential means or necessary instruments for self-expression, even self-identification," Justice Kennedy went on. "On the other hand, the ubiquity of those devices has made them generally affordable, so one could counter that employees who need cellphones or similar devices for personal matters can purchase and pay for their own."

The decision did not address the privacy rights of people employed by private companies.

The case, *City of Ontario* v. *Quon*, involved a member of the police special-weapons team in Ontario, California.

The officer, Sgt. Jeff Quon, used a pager issued to him by the Police Department to send and receive messages that were, in the trial judge's words, "to say the least, sexually explicit in nature."

A city policy on computer, Internet and e-mail use made clear that the city had the right to monitor such communications. The policy allowed "light personal communications" but said "users should have no expectation of privacy or confidentiality." Sergeant Quon signed a statement agreeing to the policy.

But the policy did not explicitly apply to text messages, and Justice Kennedy suggested that e-mail messages sent through the city's servers might be treated differently from pager messages sent via an outside company.

The Police Department's audit of pager messages, Justice Kennedy wrote, "was not nearly as intrusive as a search of his personal e-mail account or pager, or a wiretap on his home phone line, would have been."

Sergeant Quon had argued that an informal policy instituted by a police lieutenant overrode the formal one, even if the formal one did apply to pager messages. The lieutenant for a time indicated that the pagers could be used for personal messages so long as the employees responsible paid for charges beyond a 25,000-character limit. The lieutenant eventually changed his mind, and the department's internal affairs divisions audited the messages Sergeant Quon had sent during work hours for two months.

Sergeant Quon and a second officer, and the sergeant's wife and mistress, sued the department, saying their Fourth Amendment rights were violated.

The Supreme Court has said that public employers have wide latitude to search their employees' offices and files. But it has also said that the Fourth Amendment has a role to play in affording the employees some privacy rights.

In Sergeant Quon's case, a jury found that the city had a good work-related reason to audit the messages—to see if the character limit made sense as a business matter. Given that jury finding, the trial judge ruled that the search had not violated the Fourth Amendment.

The United States Court of Appeals for the Ninth Circuit, in San Francisco, reversed the decision, saying that there would have been less intrusive ways to conduct the audit. For instance, it said, Sergeant Quon could have been given notice of the change in the informal policy, or been allowed to audit himself.

Justice Kennedy assumed, without deciding, that Sergeant Quon had a reasonable expectation of privacy. Even so, he said, the city's search was not unduly intrusive. The city, he wrote, "had a legitimate interest in ensuring that employees were not being forced to pay out of their own pockets for work-related expenses, or on the other hand that the city was not paying for extensive personal communications."

Justice Kennedy dismissed the Ninth Circuit's proposals for less intrusive ways to conduct an audit as filled with "analytic errors." The possibility of a less intrusive search, he said, did not make the search that took place unreasonable. Justice Kennedy emphasized that the ruling as to Sergeant Quon was narrow, even as he explored the implications of it.

In his concurrence, Justice Scalia criticized that approach. "Applying the Fourth Amendment to new technologies may sometimes be difficult, but when it is necessary to decide a case, we have no choice," Justice Scalia wrote. "The-times-they-are-a-changin' is a feeble excuse for disregard of duty." Reported in: *New York Times*, June 17.

The Supreme Court, wading into a thicket of free-speech and children's rights issues, agreed April 26 to decide whether California can ban the sale or rental of violent video games to minors. The court will review a federal court's decision to throw out California's ban. The U.S. Court of Appeals for the Ninth Circuit said the law violated minors' constitutional rights under the First and Fourteenth amendments.

California's law would have prohibited the sale or rental of violent games to anyone under 18. It also would have created strict labeling requirements for video game manufacturers. Retailers who violated the act would have been fined up to $1,000 for each violation.

The law never took effect, and was challenged shortly after it was signed by Gov. Arnold Schwarzenegger. A U.S. District Court blocked it after the industry sued the state, citing constitutional concerns.

Opponents of the law note that video games already are labeled with a rating system that lets parents decide what games their children can purchase and play. They also argue that the video games are protected forms of expression under the First Amendment.

Schwarzenegger said he was pleased the high court would review the appeals court decision. He said, "We have a responsibility to our kids and our communities to protect against the effects of games that depict ultra-violent actions, just as we already do with movies."

However, the judge who wrote the decision overturning the law said at the time that there was no research showing a connection between violent video games and psychological harm to young people.

California's law would have prohibited the sale or rental of violent games—those that include "killing, maiming, dismembering or sexually assaulting an image of a human being"—to anyone under 18. It also would have created strict labeling requirements for video game manufacturers.

Lawyer Stephen S. Smith, who has represented several video game companies in court, said the Supreme Court may use this case to explain how far lawmakers can go when trying to regulate depictions of violence. "There is a fair amount of First Amendment law in the area of sexual explicitness and obscenity," he said. "But there is not nearly as much law on the issue of violence and what may be restricted or not under the First Amendment in that arena."

Opponents of the law note that video games already are labeled with a rating system that lets parents decide what games their children can purchase and play. They also argue that video games—which the Entertainment Software Association says are played in 68 percent of American households—are protected forms of expression under the First Amendment to the Constitution.

But supporters of the law note that the Supreme Court has upheld laws keeping minors from buying or having access to pornography, alcohol and tobacco. And the California law does not ban parents from purchasing or buying the video games for their children.

Michael D. Gallagher, president of the Entertainment Software Association, said video games should get the same First Amendment protections as the court has reaffirmed for videos.

Leland Yee, the California state senator who wrote the video game ban, said the Supreme Court obviously doesn't think the animal cruelty video ban and the violent video game ban are comparable. If the justices thought that, he said, they would not be reviewing the Ninth Circuit's decision to throw out the video game ban.

"Clearly, the justices want to look specifically at our narrowly tailored law that simply limits sales of ultra-violent games to kids without prohibiting speech," said Yee, a San Francisco Democrat.

California lawmakers approved the law, in part, by relying on several studies suggesting violent games can be linked to aggression, anti-social behavior and desensitization to violence in children. But federal judges have dismissed that research. "None of the research establishes or suggests a causal link between minors playing violent video games and actual psychological or neurological harm, and inferences to that effect would not be reasonable," Judge Consuelo Callahan said in the Ninth Circuit ruling.

Callahan also said there were less restrictive ways to protect children from "unquestionably violent" video games.

The supporters of the law say the same legal justifications for banning minors from accessing pornography can be applied to violent video games. They point to recent Federal Trade Commission studies suggesting that the video game industry's rating system was not effective in blocking minors from purchasing games designed for adults.

But courts in other states have struck down similar laws.

The video game industry also argues that approval of California's video game restrictions could open the door for states to limit minors' access to other material on the grounds of protecting children. "The state, in essence, asks us to create a new category of nonprotected material based on its depiction of violence," Callahan wrote in the 30-page ruling.

The case is *Schwarzenegger* v. *Entertainment Merchants Association*. Reported in: *Huffington Post*, April 26.

As the U.S. Supreme Court heard oral arguments April 19 in a case focused on whether a Christian law students' group has a right to exclude people who engage in homosexual behavior, the justices appeared deeply split—not just in their interpretation of the law, but in their understanding of the key facts underlying the dispute.

Many higher-education lawyers are closely watching the case, which pits the Christian Legal Society against the University of California's Hastings College of the Law, because the Supreme Court could issue a decision that leaves colleges and universities having to rewrite their nondiscrimination policies to let religious or political student groups reject potential members based on their religious beliefs or sexual practices.

During oral arguments, several members of the court's conservative majority expressed sympathy with the Christian Legal Society's argument that the law school's requirement that student groups be open to all infringes on the constitutional right of students to assemble based on religion or viewpoint. The court's liberal members, meanwhile, seemed supportive of the law school's argument that it has an interest in prohibiting officially recognized student organizations from discriminating against gay and lesbian students, regardless of the groups' motives.

Throughout the oral arguments, however, justices on both sides of the court's ideological divide expressed uncertainty about the exact nature and impact of the policy they were being asked to consider, because of remaining disagreements between the parties involved over the basic facts of the case, *Christian Legal Society Chapter* v. *Martinez*.

Early in the proceedings, Justice Anthony M. Kennedy, sounding exasperated, asked, "What is the case we have here?" That confusion over facts was seen as offering hope to Hastings, which had discouraged the court from taking up the case. It has accused the Christian Legal Society's lawyers of distorting the record of the case to make the law school's policies seem more hostile to religious organizations than they had been depicted to be when they were upheld by lower courts.

If the Supreme Court resolves its confusion by considering only those facts that both sides have agreed on, it will end up considering the factual record in the light Hastings wanted. If the court throws up its hands entirely and decides it made a mistake in even taking up the case and should not rule on it at this point—something it does with a handful of cases every year—the law school's policies will be left intact.

Considering the court's ideologically conservative tilt, however, many legal observers believe the likeliest outcome is a ruling in favor of the Christian Legal Society, a national organization that excludes gay men, lesbians, and others whose behavior it regards as sexually immoral.

"I'm pretty optimistic," Michael W. McConnell, a Stanford University law professor who argued the Christian

Legal Society's case, said after the proceedings.

In its brief to the court, the law school argued that the only policy it has had—and the only policy considered by the lower courts as a result of stipulations by both sides—is one requiring registered student organizations to be open to all.

"There should not be any debate about what policy is at issue here," Gregory C. Garre, a former U.S. solicitor general, told the court in arguing the case on the law school's behalf.

The Christian Legal Society is arguing that the law school's "all comers" policy is actually the second justification it gave for denying society members on its campus recognition as a registered student organization. Initially, the Christian organization says, the law school cited a policy that the society sees as more blatantly discriminating against religious groups—an antidiscrimination measure that, it says, bars registered student organizations from having belief- or behavior-based membership criteria in which the beliefs are religious or the behaviors sexual.

"Every time the policy is mentioned, it seems to morph into something else," McConnell complained.

In an exchange with McConnell, Justice Kennedy said the case being argued "is a much different case if Hastings treats CLS differently than it treats the Democratic or Republican clubs."

Garre argued, however, that even if the court decides the law school's policy has changed, it should focus solely on the policy as currently stated, because the Christian Legal Society is seeking a court injunction against the policy now on the books, and not damages related to any policy applied in the past.

Justice Sonia Sotomayor asked McConnell how the Christian Legal Society can even characterize itself as "banned" from the law school, when the law school lets such nonregistered student organizations use its facilities. McConnell argued that, as a practical matter, every time members of the group have sought permission to use campus facilities, "they have gotten the complete runaround."

Both Justice Kennedy and Justice Stephen G. Breyer noted the absence of anything in the case record suggesting that significant numbers of students have actually been denied membership to student groups. Justice Breyer wondered whether it is even possible for student groups to enforce litmus tests for membership based on adherence to an ideology, or which groups can be seen as ideological in their view of who should join. "I don't know how the chess club feels about players of tiddlywinks," he joked.

On related points, the legal society and the law school also differ in their assessments of whether the all-comers policy has been consistently applied to every student organization, as well as in their predictions of how religious groups on college campuses will fare if the policy is upheld.

McConnell argued that the law school does not demand that every registered student organization accept all members, but Justice Antonin Scalia broke from his pattern of lobbing friendly questions at the Christian group's lawyer to scold its legal team for failing to offer solid evidence of inconsistent treatment.

Under questioning from Chief Justice John G. Roberts Jr., Garre, the lawyer for Hastings, said the law school has required the campus chapter of the National Council of La Raza to accept as members students who are not Hispanic. In response to a question from Justice Samuel A. Alito Jr., Garre offered assurances that the law school would deny recognition to an Orthodox Jewish organization that gave women a different status from men.

Garre acknowledged some groups have membership criteria based on competitions or other measures of some form of merit, but argued that there is nothing discriminatory about such an approach. Justice Roberts asked, however, whether it might be possible for an organization to come up with a definition of "merit" based on a student's beliefs.

The Christian Legal Society has argued that, if all campus groups are required to accept anyone who wishes to join, then unpopular student organizations stand the risk of being subject to disruption or outright takeover by people hostile to their missions. McConnell raised that prospect in court, saying Hastings's policy requires a campus NAACP chapter to grant membership to avowed racists, or an environmentalist group to let in people who deny global warming.

Justice Alito seemed receptive to that argument, later asking Garre about a hypothetical ten-member organization of Muslim students. "If the group is required to accept anybody who applies for membership," Justice Alito asked, "and fifty students who hate Muslims show up and they want to take over that group, you say the First Amendment allows that?"

When Garre argued that there is no evidence of student groups being subverted in such a manner under its policy, Justice Alito pressed him, asking what recourse a Christian Legal Society chapter would have against such interference if the law school's all-comers policy is upheld. He questioned Garre's assertion that the original members of the subverted organization can always choose to leave it, asking in a skeptical tone, "If hostile members take over, former members of CLS can form CLS 2?"

Justice Ruth Bader Ginsburg suggested that existing law-school policies against incivility or disruptive policies prevent such takeovers from occurring.

Garre argued that the law school's all-comers policy promotes diversity of opinion within organizations, but McConnell said its impact is actually a watering down of differences between student groups. "If student organizations are not allowed to have a coherent set of beliefs, there can be no diversity," he said.

The four justices with liberal reputations focused much of their questioning on the law school's interest in prohibiting discrimination.

In exchanges with McConnell, Justice Ginsburg and Justice John Paul Stevens raised the question of how the professor thinks the law school should deal with student groups that hold or advocate discriminatory beliefs. Justice Ginsburg took her questioning a step further, asking how the law school should deal with a group that holds the belief that women should not occupy leadership positions.

When McConnell said the group should be granted recognition so long as it does not act on such a discriminatory belief, Justice Ginsburg said, "So they would have to negate their belief in practice?"

McConnell replied, "People can believe in all kinds of things that are illegal, but that does not mean they can do them."

In keeping with past court rulings showing deference to colleges' own decisions on the basis of academic freedom, Justice Ginsburg suggested that the best option for the court might be to leave Hastings alone to govern student groups as it sees fit. "It may be an ill-advised policy," she said, "but if the school says it is our policy, it is working fine."

Justice Scalia, however, was not nearly as accepting. "It is so weird to require the campus Republican club to admit Democrats, not just to membership, but to officership," he said. "To require this Christian society to allow atheists not just to join, but to conduct Bible classes. . . . That's crazy." Reported in: *Chronicle of Higher Education* online, April 20.

libraries

Albuquerque, New Mexico

A federal judge has invalidated a city rule that banned sex offenders from using the city's public libraries, finding that it violated the First Amendment as written.

U.S. District Court Judge M. Christina Armijo said at the conclusion of the 42-page opinion filed in late March that she struggled to find the right legal balance between competing interests in the case, which was filed by the ACLU of New Mexico on behalf of a John Doe plaintiff in 2008.

On one side is the city, which Armijo said unquestionably has a legitimate interest in promoting public safety, while on the other side is a group of individuals that, "no matter how reviled, nevertheless possesses certain constitutional rights." When those rights are burdened or, "in this case, wholly extinguished by an action of government," she wrote, the court has an obligation to closely scrutinize the action and ensure that the end result is just.

The challenged regulation in the lawsuit brought "amounts to a wholesale ban extinguishing John Doe's fundamental and protected First Amendment right to receive information," Armijo wrote. The city failed to show that there were sufficient alternative channels of communication, she said, thus creating "an unacceptable risk of the suppression of ideas."

Because the ban was broadly written rather than finely tailored, it also violated the constitutional guarantee of equal protection under law, Armijo found.

ACLU Executive Director Peter Simonson said no one questions the city's goal, "but this regulation sacrificed library access for too many people who present no threat to library-goers. A regulation like this must be narrowly tailored. . . . For many people, public libraries are, as one court put it, 'the quintessential focus of the receipt of information.'"

When former mayor Martin Chávez banned sex offenders from city libraries, he said the move was intended to keep predators away from children and public computers. "Libraries should be safe havens," he said. Chávez said the city received two or three reports over the previous year of adults making inappropriate comments to children at libraries. The city also wanted to ensure that sex offenders couldn't use library computers to contact youngsters online.

Assistant City Attorney Greg Wheeler announced plans in March 2008 for police to check the list of people with library cards against sex-offender registries and send criminal-trespass warnings to them, notifying them of potential arrest, fines and jail time for a repeat visit. Armijo's ruling bars police from enforcing the rule.

"We did research and determined that other municipalities have banned sex offenders from parks, and there is more of a protected right to have access to parks than there is to a library," Wheeler said at the time. "We believe we're on solid footing."

But Simonson warned then that besides being too broad, the ban "misses the mark. Most sex crimes are committed in the home and by someone related to the victim." Reported in: *Albuquerque Journal*, April 2.

student press

Richmond, Virginia

A federal appeals court ruled, 2 to 1, April 9 that Virginia's alcohol regulatory board can ban alcohol-related advertisements in student newspapers. The ruling could expand a debate with both First Amendment ramifications and a significant economic impact on the college press. The appeals court reversed a lower court's ruling and the new decision conflicts with one from a different appeals court, which in 2004 found a similar ban in Pennsylvania to be in violation of the First Amendment.

The Virginia regulations were challenged by *The Collegiate Times* and *The Cavalier Daily*, the student newspapers at Virginia Tech and the University of Virginia, respectively. They argued that the state rules violated the First Amendment rights of bar owners and of the newspapers to engage in commercial speech. The newspapers also noted that the regulations would cost each of them about

$30,000 a year—a significant sum in the challenging economics of the student news media.

The ruling by the U.S. Court of Appeals for the Fourth Circuit analyzed the dispute by applying a variety of tests used by other courts to evaluate restrictions on commercial speech. One category of advertising that courts have been wiling to ban is illegal activity—and Virginia's alcohol board has stressed that underage drinking, however common, is illegal. But the appeals court noted that the readers of student newspapers include students who are 21 and older, not just those who are underage, so at least some of the targets of bar advertisements would be of legal age, eliminating any argument that the ads should be barred for promoting illegal activity.

The appeals court then went on to consider other tests for the legality of the ad ban, focusing on whether the regulations were reasonably linked to appropriate government needs. On these issues, the appeals court backed Virginia's argument that the ban was needed.

There is a logical link, the court found, between advertising in student papers and students' use of alcohol. "[A]lcohol vendors want to advertise in college student publications. It is counterintuitive for alcohol vendors to spend their money on advertisements in newspapers with relatively limited circulation, directed primarily at college students, if they believed that these ads would not increase demand by college students," said the decision. "The college newspapers fail to provide evidence to specifically contradict this link or to recognize the distinction between ads in mass media and those in targeted local media."

The regulations are an appropriate part of "a comprehensive scheme attacking the problem of underage and dangerous drinking by college students," said the ruling, by Judge Dennis W. Shedd.

A dissent in the case, by Judge Norman K. Moon, argued that the majority decision underestimated the significance of the mixed readership of college papers, in which most readers are of legal age. He noted that a majority of students at these universities are 21 or older, and just about all faculty members and other readers are of legal age, so these newspapers cannot be viewed as primarily focused on those who don't have the legal right to drink.

Judge Moon also cited a decision by the U.S. Court of Appeals for the Third Circuit, in 2004, that threw out a similar ban in Pennsylvania. That decision came in a successful challenge from *The Pitt News*, the student newspaper at the University of Pittsburgh. That decision said that there was no evidence that banning ads in student papers would do any good.

"Even if Pitt students do not see alcoholic beverage ads in *The Pitt News*, they will still be exposed to a torrent of beer ads on television and the radio, and they will still see alcoholic beverage ads in other publications, including the other free weekly Pittsburgh newspapers that are displayed on campus together with *The Pitt News*. The suggestion that the elimination of alcoholic beverage ads from *The Pitt News* and other publications connected with the university will slacken the demand for alcohol by Pitt students is counterintuitive and unsupported by any evidence. . ."

That decision's author was Judge Samuel Alito, prior to his elevation to the U.S. Supreme Court.

Similar arguments were made by *The Collegiate Times*, in an editorial explaining why it wanted the right to run alcohol ads, "in the name of the First Amendment and good business sense."

Rebecca Glenberg, legal director of the American Civil Liberties Union of Virginia, which handled the case for the student newspapers, issued a statement saying that an additional appeal was possible. She said of the ruling: "The effect of this regulation that the circuit court upheld was to substantially diminish the student newspaper's revenue, which is almost totally based on advertising. Perhaps more importantly, it interferes with the editorial decision making of students, editors, and journalists." Reported in: insidehighered.com, April 12.

colleges and universities

Phoenix, Arizona

Overturning the ruling of a lower court, the United States Court of Appeals for the Ninth Circuit granted Arizona's Maricopa Community College District immunity from a lawsuit filed by a group of Latino professors who charged that college officials had not sufficiently disciplined a colleague who sent e-mails they viewed as discriminatory.

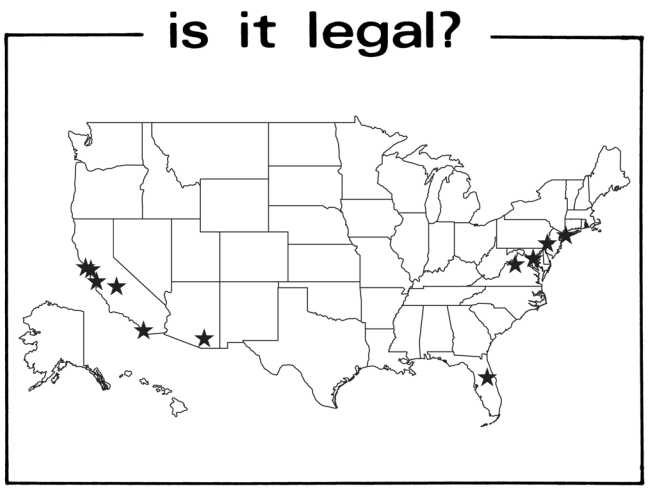
Chief Judge Alex Kozinski's May 20 opinion on behalf of a three-judge panel was a strong endorsement of academic freedom. It argues that "courts must defer to colleges' decision to err on the side of academic freedom." In doing so, the opinion defended the decision by Glendale Community College and Maricopa Community College District officials not to discipline or dismiss Walter Kehowski, a Glendale mathematics professor who "sent three racially charged emails" via the institution-maintained distribution list.

Maricopa and Glendale officials declined to comment on the decision, saying they needed more time to review it. Kehowski, however, praised the decision. "I am very pleased to see that the Ninth Circuit Court has upheld freedom of speech and academic freedom by explicitly recognizing the value of open inquiry in a free society," he wrote.

Kehowski's first contentious message, sent in October 2003 to "every district employee with an e-mail address," concerned Dia de la Raza, or "Day of the Race"—a holiday that some Latinos celebrate instead of Columbus Day. In the e-mail, he asked, "Why is the district endorsing an explicitly racist event?"

A week later, Kehowski sent another e-mail that began,

(continued on page 178)



schools

Tucson, Arizona

A bill that aims to ban ethnic studies in Arizona schools was signed into law May 11 by Gov. Jan Brewer, cheering critics who called such classes divisive and alarming others who said it's yet another law targeting Latinos in the state. The move came less than twenty days after Brewer signed a controversial immigration bill that caused widespread protests against the state.

HB 2281 bans schools from teaching classes that are designed for students of a particular ethnic group, promote resentment or advocate ethnic solidarity over treating pupils as individuals. The bill also bans classes that promote the overthrow of the U.S. government.

The bill was written to target the Chicano, or Mexican American, studies program in the Tucson school system, said state Supt. of Public Instruction Tom Horne.

School districts that don't comply with the new law could have as much as 10% of their state funds withheld each month. Districts have the right to appeal the mandate, which goes into effect December 31.

Tucson Unified School District officials said the Chicano studies classes benefit students and promote critical thinking. "We don't teach all those ugly things they think we're teaching," said Judy Burns, the president of the district's governing board.

She has no intention of ending the program, which offers courses from elementary school through high school in topics such as literature, history and social justice, with an emphasis on Latino authors and history. About 3% of the district's 55,000 students are enrolled in such classes.

Horne has been trying to end the program for years, saying it divides students by race and promotes resentment. He singled out one history book used in some classes, *Occupied America: A History of Chicanos*, by Rodolfo Acuna, a professor and founder of the Chicano studies program at Cal State Northridge (CSUN).

"To begin with, the title of the book implies to the kids that they live in occupied America, or occupied Mexico," Horne said.

"If anyone reads my books they would realize that . . . this is not a question of being against white people but rather of documenting truth. . . . This is history . . . this is learning," Acuña responded.

While the text of the bill does not specifically ask for the elimination of books, local college officials said they know the ban will cut students' access to important and relevant texts like Acuña's. "This law stifles free speech, it stifles critical information and the expression of a community that has experienced discrimination of all sorts," said David Rodriguez, professor of Chicano studies at CSUN.

Augustine Romero, director of student equity in the Tucson school district, said it now had become politically acceptable to attack Latinos in Arizona.

Ethnic studies are taught at high schools and colleges nationwide, but the Tucson district officials say their 14-year-old program is unique because it's districtwide, offered to grades K–12, and can satisfy high school graduation requirements.

In Los Angeles, more educators have been attempting to build curriculums, teaching lessons or units in ethnic studies, especially with the growth of charter schools in the area, said Maythee Rojas, the president of the National Association of Ethnic Studies. "I don't think it's uncommon anymore," she said.

In Tucson, the program is supported by a court-ordered desegregation budget, and is part of the district's initiative to create equal access for Latinos.

Board member Mark Stegeman said he believes the board needs to consider the program carefully and whether the courses, as taught, violate the new law. Perhaps an external audit could be done to assess that, he said.

The Tucson district plans to double the number of students in Chicano studies in the upcoming school year, said Sean Arce, the director of the program. Arce said that now that the bill has become law, he's waiting for direction from the district's legal department. Reported in: *Los Angeles Times*, May 12: *Contra Costa Times*, May 12.

Ardmore, Pennsylvania

A Philadelphia-area school district found itself under scrutiny after remotely activating a MacBook Web cam and capturing a young student engaging in "improper behavior at home." The student was confronted by a Harriton High School official and shown photographs of his actions. These photographs set off privacy alarms and led to a class-action lawsuit alleging that the school district has been spying on its students in their homes.

Christopher McGinley, the superintendent of Lower Merion School District of Ardmore, Pennsylvania, admitted the MacBook cameras could be remotely activated without the user's knowledge. McGinley claimed the remote camera activation was meant as a theft-prevention measure. "The District has not used the tracking feature or web cam for any other purpose or in any other manner whatsoever," McGinley said.

Nevertheless, the district apparently snapped thousands of images of teenagers in their homes, including shots of a boy asleep in his bed, documents filed in the lawsuit claimed.

In a motion filed April 15 by Michael and Holly Robbins, and their teenage son Blake, the family's attorney said Lower Merion School District personnel remotely activated Blake's MacBook over 400 times in a 15-day stretch last fall, taking photos using the notebook's camera and snapping images of the computer's screen.

"There were numerous webcam pictures of Blake and other members of his family, including pictures of Blake partially undressed and of Blake sleeping," alleged the motion. Screenshots of Blake's conversations with friends using instant messaging were also taken, said his lawyer.

The motion claimed that the LANRev software Lower Merion used to track stolen, lost or missing MacBooks took "thousands of webcam and screen shots . . . of numerous other students in their homes, many of which never reported their laptops lost or missing." Among the photographs were some of a student who had a name similar to another student's who had reported a missing notebook.

Lower Merion, of Ardmore, was first sued by the Robbins family in mid-February, when they alleged that the district spied on Blake Robbins using his laptop. Later, Robbins said, a Harriton High School assistant principal accused him of selling drugs and taking pills, and used a snapshot taken by the computer as evidence. Robbins claimed the pictures showed him eating candy.

The motion asked U.S. District Court Judge Jan DuBois to grant the Robbins' attorney access to the home of Carol Cafiero, information systems coordinator for the district, to seize any computers found in her home. Cafiero is one of two district employees who were put on paid administrative leave by Lower Merion in late February pending the ongoing investigation. According to her attorney, Cafiero only triggered the remote monitoring feature on school officials' orders.

Cafiero's computers' hard drives will be imaged, and the machines returned to her within 48 hours, the motion said. "There is reason to believe that evidence may be found on her personal home computer of the downloading of the pictures obtained from the LANRev 'peeping tom' technology," the Robbins' attorney argued.

The motion noted that Cafiero cited her right under the Fifth Amendment to not answer questions during a recent deposition, which she had earlier contested. "Unlike any of the witnesses asked to testify, [Cafiero] invokes the Fifth Amendment to every question asked of her, including a question asked as to whether she had ever downloading [sic] pictures to her personal computer, including pictures of students who were naked while in their home."

Watching the high school students at home via their computers' cameras was like "a little [Lower Merion School District] soap opera," a staffer said in an e-mail to Cafiero obtained by Robbins' lawyer during discovery. "I know, I love it!" Cafiero said in a reply, the motion asserted.

In a statement David Ebby, the president of the Lower Merion school board, countered the Robbins' newest allegations. "A motion filed yesterday by the plaintiffs ostensibly was against Carol Cafiero, but instead appears to be a vehicle to attack the District," said Ebby. "We do not feel it is appropriate for anyone other than the investigators to dictate the timing of the investigation and the release of complete findings." The district has hired a Philadelphia law firm to oversee the investigation.

But Ebby conceded that the school-issued laptops had taken a "substantial number of webcam photos," and said it had proposed to Judge DuBois that families of students who appear in those photographs be notified and given the chance to view the images.

Ebby also obliquely addressed the motion's charge that Cafiero or others used the district's technology to spy on students. "While we deeply regret the mistakes and misguided actions that have led us to this situation, at this late stage of the investigation we are not aware of any evidence that District employees used any LANRev webcam photographs or screenshots for such inappropriate purposes," said Ebby.

Earlier DuBois ordered that only lawyers for the school district would have access to camera images and screenshots of students besides those taken of Blake Robbins and his sister Paige, who also attends Harriton High School. DuBois' order also said that the district would wrap up its investigation by May 4.

"We are committed to disclosing fully what happened, correcting our mistakes, and making sure that they do not happen again," said Ebby in the April 16 statement.

In that statement the district acknowledged that investigators reviewing its controversial laptop tracking program recovered "a substantial number of webcam photos" and that they expected to soon start notifying parents whose children were photographed.

Ebby said the district's lawyers have proposed enlisting Chief U.S. Magistrate Judge Thomas Rueter to supervise a system by which parents are to be notified and allowed to view the photos. "We hope to start that process shortly," Ebby said. "During that process the privacy of all students will be strongly protected."

School officials have thus far declined to say how many students were photographed by the system, which was instituted in September 2008 to locate missing or stolen laptops. The district commissioned an internal investigation whose results were released on May 3.

Inconsistent policies. Shoddy recordkeeping. Misstep after misstep. "Overzealous" use of technology, "without any apparent regard for privacy considerations." Those were the conclusions the team of lawyers and computer experts reached after the ten-week investigation.

The report found that the software activated by the district in the past two years captured nearly 58,000 images, mostly from lost or stolen laptops. But because no one turned off the tracking system, more than 50,000 of those images were taken after the computers had been recovered and given back to students. Many were photos of students, their friends or families, in their homes or elsewhere, the report said.

None of the images appeared to show students in a compromising situtation, the report stated, and investigators said they found no proof that school staffers used the technology to spy on students.

Even so, the report portrayed employees in one of the region's elite public school districts as enamored by their cutting-edge technology but repeatedly blinded to its impact. The improperly collected images, the report said, "resulted from the District's failure to implement policies, procedures and record-keeping requirements and the overzealous and questionable use of technology by (information services) personnel without any apparent regard for privacy considerations or sufficient consultation with administrators."

The 69-page report, presented during a school board meeting at Harriton High School, was designed to be the most comprehensive explanation to date of the now-disabled tracking program that the Main Line school district installed on laptops it gave to nearly 2,300 high school students in the past two school years.

Released by Henry E. Hockeimer Jr., a former federal prosecutor hired by the district, the report marked the latest chapter in a saga that erupted with a lawsuit two months ago and has since sparked an FBI probe and international attention.

Some of the most pointed criticism seemed aimed at the technology staffers who set up and managed the system. According to the report, those employees "were not forthcoming" about the technology and were unwilling "to let anyone outside" of their department know about the tracking capabilities.

In particular, the report cited the district's longtime top technology administrator, Virginia DiMedio, for failing to let top district officials know of Web cam capabilities and to address the privacy implications. DiMedio, who retired last year, was the only district employee who did not talk with the investigators. She has said that she refused to do so because the district would not pay for her lawyer.

According to the report, DiMedio's successor, George Frazier, told investigators that when he arrived last summer, he considered the department the Wild West–"because there were few official policies and no manuals of procedures and personnel were not regularly evaluated." Frazier had reservations about the use of the theft-tracking software, according to the report, but never got a chance to raise it with district lawyers because he was "focused on issues that he considered more pressing."

But others also deserved blame, the investigators said. School board members failed to ask the right questions. District lawyers didn't probe the legal aspects of handing out computers. Building administrators didn't talk about the ramifications.

The report was prepared by lawyers from Ballard Spahr, the same firm the district has hired to defend it in a lawsuit filed by Harriton High School sophomore Blake Robbins and his parents. Robbins, who was photographed in his Penn Valley home by his school-issued laptop, contends the system represented an invasion of his privacy.

According to the report, school officials dispute Robbins' account that he was partly undressed in one Webcam photo, as well as his mother's contention that she tried to contact school officials to discuss the tracking before filing the suit.

The lawyers and L3, a computer forensics firm, together reviewed more than 500,000 documents, images and emails to piece together the history and scope of the security system. Their report offered many new details, but didn't promise to be the final word on the topic.

Investigators noted conflicting accounts from district employees and gaps in data–and said they were still gathering evidence. Their report laid out recommendations for new district policies, but also said they struggled to answer a central question in the controversy: Why didn't anyone foresee the furor that has erupted?

"Our investigation leaves unresolved questions that raise serious questions about why so many images were captured without apparent regard for privacy considerations," the report said. Reported in: *Philadelphia Inquirer*, April 16, May 3; *PC World*, February February 19, April 18.

student press

Harrisonburg, Virginia

Police officers seized more than 900 photographs April 16 from the offices of James Madison University's student newspaper, *The Breeze*, as part of their investigation into an

off-campus event on April 10 that turned into a riot.

According to *The Breeze's* editor in chief, the police, led by Commonwealth's Attorney Marsha L. Garst, arrived unannounced and threatened to remove all equipment and documents from the newspaper's offices if the photos were not turned over.

The Student Press Law Center, a nonprofit organization that defends student journalists' First Amendment rights, demanded that the authorities immediately return any photos that had not been published in *The Breeze*, saying the federal Privacy Protection Act makes it illegal to search newsrooms for unpublished news-gathering materials. Reported in: *Chronicle of Higher Education* online, April 17.

colleges and universities

Alameda, California

An East Bay community college district has agreed to respect students' freedom of religious expression in settling a lawsuit filed by two women who were threatened with suspension after one of them prayed with an ailing teacher in an office at the College of Alameda.

In the settlement, the four-campus Peralta Community College District recognized the right to "non-disruptively pray on campus." The district also agreed to remove all records of disciplinary action against the students and pay their attorneys' fees, said Kevin Snider, a lawyer with the Pacific Justice Institute, which represented the students.

Students still won't be allowed to lead organized prayers in class, but can pray in other campus locations "to the same extent that they may engage in any other free speech," Snider said.

"This was a case of voluntary prayer between consenting adults," the attorney said.

The case dates from the fall of 2007, when the students, Kandy Kyriacou and Ojoma Omaga, were studying fashion design at the Alameda college. According to their suit, they took breaks from class to pray with each other and other students on a balcony. On two occasions, in November and December 2007, Kyriacou prayed with a teacher, Sharon Bell, in an office Bell shared with other faculty. The second time, when Bell was feeling ill, another teacher came in and told Kyriacou, "You can't be doing that in here," the suit said.

Both students received notices saying they faced suspension for "disruptive behavior." Omaga was accused of praying disruptively in class. After disciplinary hearings, school officials did not suspend them but warned them they would be punished if they prayed in a teacher's office again.

District lawyers argued that the school was entitled to designate faculty offices as workplaces that would be free of disruptive activities such as "protests, demonstrations (and) prayer."

But U.S. District Court Judge Susan Illston refused to dismiss the suit in March 2009. She said a college student has the right to pray in private outside the classroom, and the plaintiffs could try to prove that the school treated religious expression more harshly than other speech. Reported in: *San Francisco Chronicle*, May 7.

Berkeley, California

The University of California, Berkeley, abused its authority by severely punishing two student protesters with little evidence of wrongdoing—and should change its policies before violating the rights of dozens of others facing discipline, the American Civil Liberties Union told Chancellor Robert Birgeneau in April.

The university's attorney did not dispute most of the ACLU's objections. "We take their letter seriously," said Mike Smith, campus counsel. "The recommendations they have about the Student Code of Conduct, I agree with some of them."

The university has been cracking down recently on students who participated in any of several campus protests against budget cuts in November and December. The administration has accused at least 63 students of violating the Code of Student Conduct, which the ACLU said should be modified to protect students' rights in accordance with state law.

In a nine-page letter, the ACLU analyzed the cases of two students—junior Zach Bowin and sophomore Angela Miller—who were present on December 11 when dozens of protesters smashed windows, lamps and planters at Birgeneau's campus residence. They are the only students disciplined so far. Dozens of others are being offered suspensions of varying lengths in exchange for avoiding the possibility of more severe punishment.

The ACLU asserted that campus administration improperly handed Bowin and Miller interim suspensions before explaining the evidence and charges against them, and before giving them a chance to offer their side. Both students deny vandalizing the chancellor's home, and no evidence has shown that they did.

Bowin and Miller were arrested and released December 11 as they and other protesters fled the vicinity of the chancellor's home. No charges have been filed. But within days, the university barred the two from campus and from speaking to anyone associated with the university, preventing them from taking final exams and submitting papers.

In an interview, Bowin said his parents flew in from out of state to communicate with faculty and administrators because he couldn't. "I was thinking, 'What did I do? What did I do wrong?'" Bowin said, recalling that after attending a rap concert that night, he followed dozens of protesters without knowing where they were headed.

"When the march ended outside the chancellor's house, I started to see a couple people running. My first instinct

was 'Run, something must be happening.' I followed a dirt path by the creek. There were police there, and they arrested me. … I think it was a wrongful arrest."

The ACLU accuses the disciplinary panel of showing bias by eventually clearing Bowin because of good grades, yet letting Miller's punishment stand—even evicting her from campus housing—due largely to poor grades. Miller has been allowed to return to class but remains under restrictions.

The interim suspensions are "remarkable examples of an abuse of University authority," wrote ACLU attorney Julia Harumi Mass to Birgeneau and Chris Kutz, chair of the Academic Senate.

Smith, the campus counsel, would not comment on students' cases. But he said he agrees with several points made by the ACLU.

"I think we need to fine-tune the interim suspension part of the process, and we're doing that," he said. "We've already modified the gag orders" that bar students from talking with university-affiliated people, but he declined to say how it had changed.

Smith said he disagrees with the ACLU that attorneys should be allowed to participate in disciplinary hearings. Nor does he think that people sitting on disciplinary panels should receive training in due process, as the ACLU recommends.

"Where we need to be making changes," he said, "we'll make them." Reported in: *San Francisco Chronicle*, April 8.

Fresno, California

A Fresno community college science instructor is appealing a warning letter the school sent to him for telling students that homosexuality is a mental disorder and quoting the Bible as proof that human life begins at conception.

Charles Magill, a lawyer representing Fresno City College instructor Bradley Lopez, said that his client disputes some of the allegations that led to what the school terms a "notice of correction." The warning letter outlines what a faculty member must do to avoid further discipline.

College administrators sent Lopez the notice in response to complaints raised by three students and the American Civil Liberties Union.

Magill says Lopez plans to contest the notice in an administrative process that allows him to challenge alleged deficiencies in his teaching methods. Reported in: *Contra Costa Times*, April 8.

Moraga, California

Saint Mary's College has punished a singing instructor, who is the brother of a college trustee, for his choice to use a song that uses racist terms in a voice class. College leaders said April 26 that the incident called into question Louis Lebherz's future at the school. The musician already has been forced to apologize to the class and to complete diversity training, said Beth Dobkin, the college's provost.

Lebherz, an artist in residence at Saint Mary's, had been asked to teach classes this year, Dobkin said. His choice to use the original version of the show tune "Old Man River," which refers to slaves and African-Americans in derogatory terms, will affect his employment, she said.

"It already has, but I can't tell you to what extent," Dobkin said. "We're continuing to discuss our future relationship with him."

In a letter written to the African-American student who raised the complaint, Lebherz apologized for his choice of the original score. The offensive language was taken out of later versions of the song.

"I sincerely wish to apologize to you for my insensitivity in having a student sing a song which called attention to the racial problems that were and are a serious problem for our nation, and also for our own institution," Lebherz wrote to senior E.J. Youngblood.

The incident came at a particularly fragile time for the Catholic school. Administrators have tried to make the college a more welcoming place for minorities since 2008, when regional accreditors criticized the school for having shoddy race relations and a lack of diversity.

Accreditors earlier this year commended the college for improvements, but students in April protested several areas of weakness, including a lack of tolerance among employees and a shortage of minority professors. Youngblood said he does not think the college has responded strongly enough to his grievance.

"I want him to be fired but, realistically, I know that's not going to happen because his brother is on the board of trustees," said Youngblood, who dropped Lebherz's class after the March 4 incident.

Dobkin said the college has followed its disciplinary rules to the letter and that she does not know of any contact related to the matter between Philip Lebherz and college officials. Reported in: *Contra Costa Times*, April 27.

San Diego, California

On March 4, as thousands of students and faculty across California took to the streets to protest budget cuts and tuition increases across the state's university system, Ricardo Dominguez, an associate professor of visual arts at the University of California's San Diego campus, engineered a demonstration of a different kind.

Dominguez arranged for hundreds of students to register for a "virtual sit-in," which involved logging on to the Office of the President portal on the system's Web site and prompting the page to reload over and over. The idea was to jam the site, making it difficult for other visitors to enter—in essence, occupying the president's virtual office, instead of his physical one, in order to make a statement.

According to news reports, Dominguez also caused the message "There is no transparency found at the UC Office of the President" to appear, in emulation of the slogans protesters might express at a conventional sit-in.

The stunt landed the tenured professor in hot water with campus police and the San Diego administration. According to Micha Cardenas, a visual arts lecturer and Dominguez collaborator, the university is investigating Dominguez for orchestrating what is known as a "distributed denial-of-service attack," or DDoS. The Department of Homeland Security defines a DDoS attack as an attempt "to prevent legitimate users from accessing information or services" using multiple computers.

The university has informed Dominguez that if he is found to have violated any laws or university policies, it could jeopardize his tenure status, according to Cardenas.

University officials released a statement saying, among other things, that "[e]ach campus of the University provides training regarding legal responsibilities of our employees, and has established processes by which complaints regarding allegations of misuse or illegal activity are reviewed to ensure adherence to state and federal law."

Charles Robinson, vice president of legal affairs and general counsel at the university, said that employees could be fired if they violate state or federal laws or university policies, depending on the details of the case. Denial-of-service attacks targeted at the university could certainly be grounds for termination, Robinson said. He too declined to discuss the details of the Dominguez case.

Dominguez's defenders are quick to distinguish his act of protest from a typical DdoS. "A DDoS is prolonged and unending, used by various governmental groups to censor a wide variety of free speech groups, activist groups, etc, and non-transparent," wrote Cardenas, who is a member of b.a.n.g. lab, an artists' collective founded by Dominguez, in an online petition. "The creators of the DDoS set up virtual robots to blast a given site with millions of hits, and hide the creators behind various firewalls and filters. A virtual sit-in is open, does not use such 'robots,' and the creators are identified freely."

The Homeland Security Department defines a DDoS in much sparser detail: as a denial-of-service attack that "is 'distributed' because the attacker is using multiple computers, including yours, to launch the denial-of-service attack."

Cardenas circulated the online petition leading up to a scheduled meeting between Dominguez and Paul Drake, senior vice chancellor for academic affairs at the university, collecting about 1,400 signatures from around the world. Cardenas said more than a hundred students and faculty showed up for a rally outside the meeting. The meeting was postponed after Dominguez decided to retain an attorney before allowing himself to be questioned, she said.

The virtual sit-in is not the only reason Dominguez's career may be at risk. Local lawmakers recently have gone after the professor's Transborder Immigrant Tool, which allegedly helps illegal immigrants find water jugs and duck border agents once they are on U.S. soil.

The online petition also addressed this piece of Dominguez's work, criticizing the university for caving to political pressure after initially approving the project for funding. To Dominguez's champions, investigating the professor for these subversive acts after originally rewarding his work in computer-based civil disobedience with tenure is like hiring someone to paint a house and then investigating him for vandalism.

Adam Kissel, director of the individual rights defense program at the Foundation for Individual Rights in Education, said the Transborder Immigrant Tool is probably more easily defensible than the virtual sit-in. Whereas Dominguez could argue for the immigrant tool as a humanitarian effort, it would be difficult to make a rights case for the sit-in, because it in fact violated the university's right to run an unimpeded Web site, and visitors' right to browse it.

Cardenas, however, argued that a virtual sit-in should be allowed the same protections as the sort of assembly that inspired it. "Our right to demonstrate on the UCOP Web site is no different than staging a sit-in at [University of California System President Mark] Yudof's office." Reported in: insidehighered.com, April 9.

Santa Cruz, California

The American Civil Liberties Union sent a letter to University of California, Santa Cruz officials April 27 citing possible violations of due process for the dozens of students fined for their alleged involvement in November's occupation of Kerr Hall.

The letter discussed students summoned before a university disciplinary panel earlier this year who were not given hearings or access to specific evidence linking them to damages at the administrative building.

The ACLU's involvement came after 36 students were each fined $944 earlier in April for their supposed involvement in damages to Kerr Hall, illegally occupied in late November for three days by students angry at a 32 percent hike in fees. The sit-in cost the university $35,000 in cleaning and related costs.

"The notices failed to identify specific facts," said ALCU of Northern California lawyer Julia Mass.

"First, for all students facing proposed discipline and restitution, there is clear evidence confirming their participation in conduct that violated university policy," responded campus counsel Carole Rossi. "Second, all students charged with code violations are given the opportunity to review the evidence in support of the charges against them." Students who don't resolve the matter through a voluntary resolution process will be offered an opportunity to appeal the proposed sanction, Rossi said. The appeals, either before a hearing board or the administrative review officer, provides

for a review of the facts of each case and students have the right to consult with counsel or an advisor during the process, Rossi said.

While the letter may be new to university officials, the concerns of student's civil rights were a top concern at an Academic Senate meeting the previous week. At the meeting, Chancellor George Blumenthal addressed concerns of faculty who said the university's actions against the students were heavy-handed and that the university's code of conduct must be revised. He agreed and also said students could request formal hearings for appeal and would have access to all evidence that may exist against them.

Blumenthal also said he would form a committee to look into changing the code of conduct. But, at the meeting, he refused to drop charges against the students.

Mass said the chancellor's comments were good news, but "it's hard to evaluate whether it's going to be adequate." Meanwhile, the fallout from the Kerr Hall incident has continued to divide the school, as the code of conduct implies all students involved in the occupation could be held liable for the actions of the those who actively destroyed university property.

"It's about the way the students were encouraged to self-incriminate," in their original disciplinary meetings, said UCSC literature professor Carla Freccero, one of several faculty who have accompanied students to subsequent meetings with disciplinary officials. She said many of the students, some of whom were identified through photographs, simply admitted to being in the building, but not to damaging property.

But the code of conduct doesn't differentiate.

"Any student can be held responsible," said Gail Hershatter, a UCSC history professor who also is a student advocate. "You have to link them to some of the property damage they are being fined for." Hershatter said given the struggles the university will continue to face, it is likely students will protest again, and the university doesn't have the framework to deal with the outbursts. "I care a lot about this university," she said. "I just want the terms of engagement to be rethought around here." Reported in: *Santa Cruz Sentinel*, April 28.

Orlando, Florida

When it comes to incriminating videos these days, the one of Bruce K. Waltke might seem pretty tame. It shows the noted evangelical scholar of the Old Testament talking about scholarship, faith and evolution. What was incriminating? He not only endorsed evolution, but said that evangelical Christianity could face a crisis for not coming to accept science.

"If the data is overwhelmingly in favor of evolution, to deny that reality will make us a cult . . . some odd group that is not really interacting with the world. And rightly so, because we are not using our gifts and trusting God's Providence that brought us to this point of our awareness," he says, according to several accounts by those who have seen the video.

Those words set off a furor at the Reformed Theological Seminary, where Waltke was—until April—a professor. (The seminary is evangelical, with ties to several denominations.)

The statements so upset officials of the seminary that Waltke had to ask the BioLogos Foundation, a group that promotes the idea that science and faith need not be incompatible, to remove it from its Web site (which the foundation did) and to post a clarification. The video was shot during a BioLogos workshop. But even those steps weren't enough for the seminary, which announced that it had accepted his resignation.

Waltke is a big enough name in evangelical theology that the incident is prompting considerable soul-searching. On the one hand, his public endorsement of the view that believing in evolution and being a person of faith are not incompatible was significant for those who, like the BioLogos Foundation, support such a view. Waltke's scholarly and religious credentials in Christian theology were too strong for him to be dismissed easily.

But the fact that his seminary did dismiss him is viewed as a sign of just how difficult it may be for scholars at some institutions to raise issues involving science that are not 100 percent consistent with a literal interpretation of the Bible.

"I think it's a really sad situation, even if this isn't the first time a scholar at a religious institution has been released for unorthodox views," said Michael Murray, vice president for philosophy and theology at the John Templeton Foundation, which supports BioLogos and other efforts to bridge science and religion.

Waltke issued a joint statement with the head of BioLogos in which he stood behind the substance of what he said in the video, but also said that he wished he could have provided more context, particularly his view that it is possible to believe in evolution and also believe in "in the inerrancy of Scripture."

Michael Milton, president of the seminary's Charlotte campus and interim president of its Orlando campus, where Waltke taught, confirmed that the scholar had lost his job over the video. Milton said that Waltke would "undoubtedly" be considered one of the world's great Christian scholars of the Old Testament and that he was "much beloved here," with his departure causing "heartache." But he said that there was no choice.

Milton said that the seminary allows "views to vary" about creation, describing the faculty members there as having "an eight-lane highway" on which to explore various routes to understanding. Giving an example, he said that some faculty members believe that the Hebrew word yom (day) should be seen in Genesis as a literal 24-hour day. Others believe that yom may be providing "a framework" for some period of time longer than a day. Both of those

views, and various others, are allowed, Milton said.

But while Milton insisted that this provides for "a diversity" of views, he acknowledged that others are not permitted. Darwinian views, and any suggestion that humans didn't arrive on earth directly from being created by God (as opposed to having evolved from other forms of life), are not allowed, he said, and faculty members know this.

Asked if this limits academic freedom, Milton said: "We are a confessional seminary. I'm a professor myself, but I do not have a freedom that would go past the boundaries of the confession. Nor do I have a freedom that would allow me to express my views in such a way to hurt or impugn someone who holds another view." Indeed he added that the problem with what Waltke said was as much his suggestion that religion will lose support over these issues as his statements about evolution itself. (The statement of faith at the seminary states: "Since the Bible is absolutely and finally authoritative as the inerrant Word of God, it is the basis for the total curriculum.")

Given Waltke's role and reputation, Milton said that his resignation wasn't accepted on the spot. But after prayer on the question, Milton said, officials accepted the resignation.

Even before word of Waltke's resignation spread, his need to ask BioLogos to remove the video worried many Christian thinkers who want more public discussion about science. A blogger at Jesus Creed wrote that he didn't agree with all of Waltke's views, but very much agreed that they deserved serious discussion.

The blogger focused his praise on a quote from Waltke in the video in which he said that "to deny the reality would be to deny the truth of God in the world and would be to deny truth. So I think it would be our spiritual death if we stopped loving God with all of our minds and thinking about it, I think it's our spiritual death." The blogger wrote that "we do not preserve the church by drawing lines and building walls." Such a philosophy, he added, will not be easy, but may be essential. "Unfortunately growth causes growing pains—and growth brings uncertainty. People get defensive and people get hurt. We see this today and are poorer for it. It is also—my opinion, not from Waltke's comments—our spiritual death in witness to the world when we backstab, fight, condemn, and censor amongst ourselves. We are our own worst enemy."

At BeliefNet, Rod Dreher blogged that "even though I would agree that Waltke's controversial remarks were overstated, it is all but incomprehensible that in 2010, any American scholar, particularly one of his academic distinction, could be so harshly bullied for stating an opinion consonant with current scientific orthodoxy. Doesn't Waltke at least have the right to be wrong about something like this?

"Don't mistake me, I believe that any and every religion, and religious institution, has the right, and indeed the obligation, to set standards and to enforce them. But is this really the hill these Reformed folks want to die on?" (Dreher is director of publications at Templeton but stressed that his blog does not represent the foundation.)

Darrel Falk, a professor of biology at Point Loma Nazarene University and president of BioLogos, said he was "disappointed" by what happened to Waltke, and said that it showed the need to continue to promote meaningful dialogue between those in the worlds of science and faith. He said that Waltke took "a real risk" by speaking out, and that there is going to be a danger for those who work with religious groups whose leaders and members "just don't understand science."

On the BioLogos Web site, Falk posted a statement called "On the Courage of Bruce Waltke." He closed the statement this way: "Decades from now, when the Evangelical Church has come to terms with the reality of evolution, we hope she will look back at those who were the pioneers on its journey toward a fuller understanding of the manner by which God has created. I could list other pioneers, a number of whom are good friends and colleagues.

"Right there alongside them will be Dr. Bruce Waltke who, in the latter phase of an extremely distinguished career, had the courage to tell the Church what it needed to hear. The fact that he did so with a remarkably gentle spirit of love will be a reminder to all that the real battles are won when we simply live the reality of the Gospel. To do this—in the face of adversity—is the ultimate in courage." Reported in: insidehighered.com, April 9.

PATRIOT Act

Washington, D.C.

The Justice Department will put into action additional oversight of the PATRIOT Act, the Senate Judiciary Committee announced June 16.

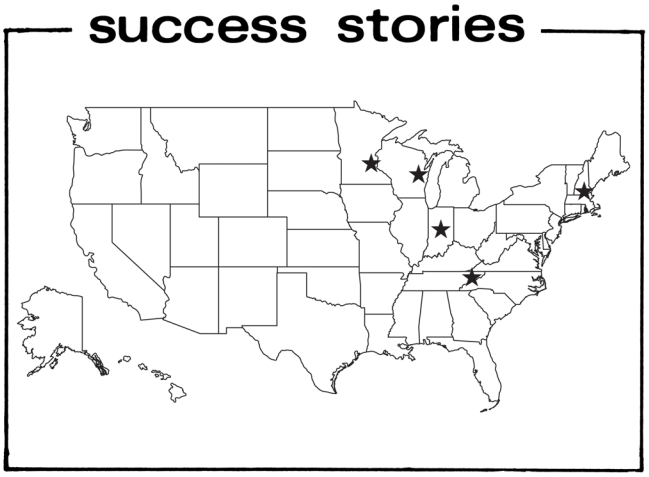
Panel Chair Patrick Leahy (D-VT), who introduced the PATRIOT Act renewal legislation last year, urged Attorney General Eric Holder in March to implement safeguards for the use of the PATRIOT Act even though they are not required by law.

In a letter to Leahy dated June 15 Justice Department Inspector General Glenn Fine wrote that the department's Office of the Inspector General plans to review many of programs for which Leahy asked for additional oversight.

"[W]hile our review may not address every one of the specific provisions that were contained in [Leahy's bill], we anticipate that the results of our review will address many of the important issues reflected in the oversight provisions that were part of that bill," Fine wrote.

The Senate Judiciary Committee approved the legislation in October that would reauthorize the "lone wolf," business records and "roving wiretap" powers in the PATRIOT Act and require additional civil liberties and

(continued on page 184)



libraries

Rosemount, Minnesota

A graphic novel series will remain in elementary school libraries in a suburban Minneapolis-St. Paul school district, a committee decided April 27 after debating whether its content is appropriate for students.

The group of parents, teachers and media specialists from the Rosemount-Apple Valley-Eagan school district agreed 10–1 that the series, *Bone*, by Jeff Smith, should not be banned from 12 of the district's 18 elementary schools. The question came after parent Ramona DeLay asked the district to remove the series because the books include smoking, drinking and gambling in its graphics and storyline.

DeLay made her argument to the committee before the vote. "I do stand strongly against this," said DeLay, 35, of Apple Valley. "Smoking and drinking is not allowed on our school properties, but can be in our school library. I am advocating that the series of *Bone* novels be pulled from our elementary libraries in our district."

The district's media specialists use several policies to determine whether books are appropriate for school libraries, said Melinda Martin, who serves as a media specialist at Glacier Hills Elementary in Eagan. Martin argued before the vote to have schools keep the series.

The books have won several awards and received positive reviews from national publications, including *Time*, which touted the series as the "best all-ages graphic novel ever published," Martin said.

"It's important to understand selection from censorship," she said. "I respect her right to object to the series, but not for her to censor it for the rest. I feel you would be doing a disservice to our district if you remove this book from our elementary schools."

In a letter to the district, the author responded to his book being under fire. Smith said it was the first time the series has been publicly criticized that its content has "bad behavior."

The *Bone* series, which has been in the district's libraries since 2006, is rated suitable for fourth grade and up in online book reviews. Kyle Good, a spokesman from Scholastic, which publishes the series, also said reviews from publications—such as the *Washington Post* and the *School Library Journal*—have been overwhelmingly positive and describe the books as "hilarious" and "thrilling drama" for children.

Rosemount students Spencer Strop, 13, and his fourth-grade brother, Preston, said they agree. "I didn't take it in a bad way," said Preston, who began reading the books when his brother brought them home. "It's not like anybody got drunk or was doing anything bad with drinking."

The brothers said the setting of the novel is in a tavern, and some of the characters occasionally smoke a pipe and cigars. Spencer first picked up the novel from the library at Rosemount Middle School. "We were actually hoping it would stay," he said.

Their mother, Mereyle Strop, said she talked with her sons about the series' content. She brought her sons to the committee meeting so they could hear a different opinion about the books. "It's important for them to see the process of how books are chosen," she said.

The last time the district banned a book was in 1997, said Steve Troen, the district's director of teaching and learning. The last book removed was *All But Alice*, by Phyllis Reynolds Naylor, which is about a motherless seventh-grader trying to find female guidance. The reconsideration committee voted to keep that book, but the decision was appealed and the school board ruled that the book be removed.

In the past twenty years, the district has had twenty requests to have instructional resources banned, Troen said. The last request was in 2006. The reconsideration committee has not granted many of the requests.

Lynn McGrane, a teacher and literary specialist in the district, who was on the committee, said educators should be careful what books they ban from the classroom—and keep away from students. "If that's the place where they start, we have to honor that and take them where they're at," she said. "I would like to access it to support a child in their reading." Reported in: *St. Paul Pioneer-Press*, April 28.

Nashua, New Hampshire

The Pennichuck Middle School parent who challenged whether a children's horror story should be read by city students has withdrawn his request to ban the book.

Robert McCarthy asked the district to discontinue using the book *Wait Till Helen Comes: A Ghost Story*, by Mary Downing Hahn. McCarthy withdrew his request after learning that the book was not required reading in the school but was instead shelved in the library.

"I think this is one of those instances when further communication with the parent helped relieve their concerns," said Superintendent Mark Conrad.

McCarthy said it was likely a miscommunication between himself, his son and his son's teacher that led him to believe that his son had to read the book. "It just looked like he wasn't given another option," he said. "I don't see a need for my son to read a book that talks about people talking to the dead."

When he learned from the district that it was not required, he decided to withdraw his request so other students, whose parents had no objection to the book, could read it. "I'm not going to force my viewpoints on people in the future who want to read that book," McCarthy said.

On a "Request for Reconsideration of Printed or Audio-Visual Material" form McCarthy submitted, he said he objected to the book's theme's of talking to the dead, spiritism and "the belief that a part of the body survives after death and that you can communicate with it."

"The act of talking to the dead is called spiritism and is condemned in the Bible Galations 5:19-21," McCarthy wrote.

Conrad said *Wait Till Helen Comes* is the first book a parent has challenged since 2008 when a Main Dunstable Elementary School parent challenged the use of *The Giver* because of its themes of euthanasia.

Wait Till Helen Comes is a horror novel about a 7-year-old girl named Heather who begins communicating with the ghost of a little girl named Helen.

Althea Sheaff, executive director of curriculum for the district, said eight to ten copies of the book are available in the city's three middle school libraries and it is not a required reading selection. Conrad said the school's curriculum sometimes requires students to select a book to read without specifying what book.

Conrad said he hasn't read *Wait Till Helen Comes*. "I think a great deal of thought goes into the selection of grade-level appropriate reading materials," he said. "I think we have a very good process that allows for a parent to raise a concern and to place their concern into a fair process for reviewing it." Reported in: *Nashua Telegraph*, May 13.

Fond du Lac, Wisconsin

A parent's mission to remove a book from Fond du Lac middle schools has ended. The Fond du Lac Board of Education voted April 12 to uphold Superintendent Jim Sebert's decision to keep the book, *One of Those Hideous Books Where the Mother Dies*, available to students in sixth through eighth grades.

Ann Wentworth, who had opposed the sexual content and age-appropriateness of the Sonja Sones book, said she was not surprised by the final word in what had been a long book reconsideration process.

"I've asked the School Board to look into how books are selected and consider a rating system, but it's taking forever. I can be patient," Wentworth said. She is also waiting to move two additional books through the process: *Forever in Blue, the Fourth Summer of the Sisterhood*, from the Sisterhood of the Traveling Pants series by Ann Brashares; and *Get Well Soon* by Julie Halpern.

It was the first time a Fond du Lac Board of Education had ever seen a challenged book in the district come before it for a final appeal. Therefore, it took longer, said curriculum and instruction coordinator John Whitsett.

"We had never done this, never been through the procedure before, then there was spring break, then the board members had to read the book," Whitsett said.

Wentworth first challenged the educational materials on January 13, after her 11-year-old daughter, who is in sixth grade, took the book home from school. She noted that the author herself had said the book was suitable for children ages 12 and up.

"The children at Theisen are going to be thinking about sex whether they read the book or not," wrote nationally acclaimed author Sones in a letter to Superintendent Sebert about her book.

The challenge of a school library book in Fond du Lac received national attention from proponents on both sides of the issue. The reconsideration committee, and then Sebert, had concluded the sexual references in the book were not graphic in nature.

School Board member Peter Kujawa said he would have had concerns with his 11-year-old daughter reading the book. "I think we have to have some way for parents to indicate that they want their child to read age-appropriate material," Kujawa said, and questioned the capabilities of the Alexandria Library software system administrators had touted as a means to allow parents to monitor what their children checked out of the libraries.

Board President Eric Everson said a School Board workshop will be scheduled to go over the system because no one is "exactly sure" how it will be used as a parental monitor, or if the child's birth date could be used as a tool. "We don't want to be telling children they can't read a book because they are a certain age," said board member Susan Jones.

Because it took three months to reach a conclusion, Kujawa said he also hoped that in the future there would be a more efficient way to go through the reconsideration process. Reported in: *Fond du Lack Reporter*, April 13.

schools

Indianapolis, Indiana

A committee of Franklin Township educators and parents recently ruled in favor of keeping Toni Morrison's *Song of Solomon* in the high school's Advanced Placement curriculum, but officials said the decision could be appealed to the School Board.

Superintendent Walter Bourke said written notice of the recommendation was presented May 27 to School Board members and the parents who filed the initial complaint. The committee's decision and the likely appeal have parents on both sides of the issue vowing to keep fighting.

"We can sit here and pretend the kids never hear bad language or talk about sex, or we can address the issues. Our teachers are so good," said Shelley Tudor, who served on the book committee and has a daughter who was in one of the AP classes that studied the novel.

However, Jim Foltz, a parent with one child at the high school, said the language and sexual content in the book are a concern for him.

Song of Solomon is the story of a young black man struggling to come to grips with a complex family history. It begins and ends with suicide, and Morrison employs dream sequences and graphic descriptions of sex and violence to tell her story. Detailed passages also include profanity. It has been banned in other school districts but had been used at Franklin Central High School for a decade with no major objections from parents, Principal Kevin Koers said.

The award-winning book, which was being used in two 11th-grade Advanced Placement English classes, was pulled from the classrooms April 28 after a parent and two School Board members complained about the content. The book was returned to the classrooms two days later, however, after the book committee determined its members should read the novel before making any ruling and because students had read half the book and were to be tested on the material before the school year was scheduled to end May 19.

In a May 26 letter to Bourke on behalf of the committee, Koers said the unanimous decision to continue using the book was based upon five findings:

- Students in the AP English 11 course elect to take the course and have the potential to earn college credit. The course is taught as a college class.
- Students and their parents are sent a letter before the class starts describing the course and the books to be used. "The letter states that selections deal with mature and sometimes controversial themes."
- The book has been used at Franklin Central for years without complaint.
- The committee heard testimonials from former students who are attending college "regarding the advantage they have held by not only the reading of the book but also the manner in which the literature was taught and explained."
- Students read and learn about this book and others in a safe environment and under the guidance of a teacher.

School Board President Steve Randall served on the committee and said people need to understand the full context of the book before judging it and should also recognize that it is historical fiction. "(People need to) get out of their box and understand that this is an accurate description of some people at the time that it happened," Randall said.

Because the class is an Advanced Placement selection, he said, students are able to handle more mature themes. "These are college-level courses taught in a safe environment, and it's an elective. Also, there's an option to read a different book."

If use of the book is appealed as expected, the School Board would vote on its merits in the classroom. That will likely happen at the June or July meeting.

Assistant Superintendent Jim Snapp said the book review process was established last year, after parents complained about *Slaughterhouse Five*, by Kurt Vonnegut. "The process is intended to not have any one person decide what is or is not in the curriculum," Snapp said.

In the past, books such as *The Jungle*, *Swimming to Antarctica* and *Master Harold and the Boys* were informally removed from the curriculum after parents complained. "I think that this process is far more representative," Snapp said. Reported in: *Indianapolis Star*, June 3.

Knoxville, Tennessee

The Knox County School Board voted six to three, May 5, to keep a controversial textbook in the classroom.

The book, *Asking About Life*, and its controversial statement of the Judeo-Christian creation story as a "myth" has been a hot topic of debate since February. Frank Zimmerman, a Farragut High School student's father, filed a complaint with the school system over what he called a bias against Christian ideology earlier this year.

During the two hours of deliberation over the potential removal of the book from classroom use, board members listened to seven people's comments. Each speaker was met with applause from the crowd regardless of their point of view.

During his five-minute public commentary allotment, Zimmerman said that the school system had violated several of its own policies regarding religious neutrality by adopting the textbook for classroom use. "I have to be real candid with you, I'm extremely disappointed that none of these policies were followed over the weeks leading up to the meeting," Zimmerman said.

Of the additional six members of the public who spoke at the meeting, four were for the removal the textbook, and two were against it.

"My concern really is for science literacy," said Gary McCracken, one of two University of Tennessee science professors who spoke in favor of keeping the book. "The book used the term myth in the context of how science determines information."

The book had already been reviewed and approved in February by a special panel consisting of Farragut High School teachers, principals and students and found to be more than acceptable.

After about two hours of deliberation ranging from personal feelings over the use of the term "myth" when referring to Judeo-Christian ideology to solutions on how to keep future science books from sparking similar controversy, the members of the board voted to uphold the panel's findings.

Indya Kincannon, Chair of the Knox County School Board, drafted the motion that upheld the book review committee's decision. Kincannon wrote that the board of education regrets the authors' use of the term "myth" as an unfortunate choice of wording, and that the Superintendent of Schools Jim McIntyre should purchase the new biology textbooks already approved as soon as fiscally responsible. Reported in: *Knoxville Journal*, May 10. □

(from the bench . . . from page 166)

"YES! Today's Columbus Day! It's time to acknowledge and celebrate the superiority of Western Civilization." In the message he also quoted various articles, including one that asserts that "America did not become the mightiest nation on earth without values and discrimination" and argues that "[o]ur survival depends on discrimination."

Another two days later, Kehowski sent the third message, in which he quoted a colleague's e-mail calling his messages "racist." He responded, "Boogie-boogie-boo to you too! Racist? Hardly. Realistic is more like it." He also linked to a Web site he maintained on the district's server. On his site, Kehowski wrote that "[t]he only immigration reform imperative is preservation of White majority" and encouraged readers to "[r]eport illegal aliens to the INS."

After great commotion among faculty members over Kehowski's e-mails, Phillip Randolph, then president of Glendale, sent a note to everyone at the college.

"[T]he openness of our [e-mail] system … allows individuals to express opinions on almost any subject," Randolph wrote. "However, when an e-mail hurts people, hurts the college, and is counter to our beliefs about inclusiveness and respect, I cannot be silent. In that context, I want everyone in the [college] community to know that personally and administratively, I support the District's values and philosophy about diversity."

Rufus Glasper, chancellor of the district, also weighed in on the matter at that time, in a press release stating that Kehowksi's "message is not aligned with the vision of our district." Still, he cautioned that any disciplinary action taken against Kehowski "could seriously undermine our ability to promote true academic freedom."

Though many district employees "complained to the administration that Kehowski's statements had created a hostile work environment," according to latest ruling, the administration did not take disciplinary action against Kehowski, and "no steps were taken to enforce the district's existing anti-harassment policy." With the aid of the Mexican American Legal Defense & Educational Fund, six Glendale employees sued the district, Glasper, and Randolph in November 2004, seeking damages for their lack of action against Kehowski. A federal district court sided with the plaintiffs in 2008.

In overturning that decision Kozinski summarized the crux of his court's logic at the close of his opinion.

"It's easy enough to assert that Kehowski's ideas contribute nothing to academic debate, and that the expression of his point of view does more harm than good," he writes. "But the First Amendment doesn't allow us to weigh the pros and cons of certain types of speech. Those offended by Kehowski's ideas should engage him in debate or hit the 'delete' button when they receive his e-mails. They may not invoke the power of the government to shut him up."

All of the plaintiffs—David M. Rodriguez, a librarian; Judy Gonzales Poggi, a child/family studies professor; Jose Mendoza, a coordinator for minority services; Frank Rivera, a mathematics professor; Mario Quezada, a custodian; and Esther Anaya-Garcia, a student services specialist—chose not to comment on the decision.

Diego Bernal, a MALDEF attorney representing the plaintiffs, had a restrained response to Kozinski's opinion.

"We disagree with the court's suggestions that racially or sexually harassing speech must be accompanied by an actual or perceived threat of conduct," Bernal wrote in an e-mail. "Harassment through e-mail and other electronic mediums must be taken seriously by courts, and cannot be remedied by simply 'pressing the delete button.'"

Bernal also noted that the decision did not address the "Title VII hostile work environment claims, brought by a class of District Latino employees," adding that they remain in place against the Maricopa district and its governing board.

The circumstances dealt with in this case would not be

the last time that Kehowski, who remains a tenured professor at Glendale, raised a ruckus there. In 2006, just before Thanksgiving, he sent an e-mail to the same list with a copy of George Washington's Thanksgiving Proclamation of 1789, citing the blog of Pat Buchanan as his source. When some employees complained that Kehowski's link to Buchanan's blog constituted harassment because of the anti-immigration views contained on the site, he was placed on leave and his termination was recommended to the Maricopa board. With the help of the Foundation for Individual Rights in Education, Kehowski won an appeal and was allowed to return to work. Reported in: insidehighered.com, May 21.

Mansfield, Ohio

Freshmen who entered Ohio State University at Mansfield in the fall of 2006 graduated in June 2010. A legal battle set off by the selection of a book for them all to read their first semester only came to a close on June 7, when a federal judge rejected a former librarian's lawsuit against the university.

The former librarian, who said he felt pressured to resign after losing support at the university, was on a committee that was assigned to pick a book for the freshmen to read. During the deliberations, he suggested an anti-gay book—and his recommendation and the comments he made about the book led to an intense debate among faculty members at the university. The librarian's case became something of a cause célèbre in some circles, with the librarian portrayed as being ostracized for his Christian, conservative views. But many faculty members said that the issue wasn't political correctness, but professional responsibility.

The ruling rejected all of the librarian's claims and backed Ohio State, finding that there was no legal standing to challenge the university's policies and that the case did not raise free speech issues. And it was also the latest to apply a controversial Supreme Court decision that many national faculty leaders fear is being applied in ways that could limit academic freedom. In this case, the judge ruled that the work of the faculty committee didn't have the same legally protected status for academic freedom as would a professor's teaching or research.

Ohio State Mansfield in 2006 was joining the growing number of colleges that ask all freshmen to read the same book as part of their arrival at the institution. Scott Savage, then the head reference librarian and a self-described conservative Christian, joined a faculty committee charged with selecting a book. In discussions, he criticized some of the proposed ideas as political, and when other committee members said that wasn't a problem, he suggested a number of conservative texts, with the most discussion focusing on one of his nominations: *The Marketing of Evil: How Radicals, Elitists, and Pseudo-Experts Sell Us Corruption Disguised as Freedom*, by David Kupelian.

The book suggests that a gay conspiracy is hurting society. Publicity material for the book blasts the gay civil rights movement for changing "America's former view of homosexuals as self-destructive human beings into their current status as victims and cultural heroes" and says that this transformation campaign "faithfully followed an in-depth, phased plan laid out by professional Harvard-trained marketers."

Savage said that he suggested the book to make a point, not necessarily to have it assigned, but he engaged in a series of e-mail discussions with faculty members in which he defended the choice and rejected their view that assigning such a book would send a message of intolerance to gay students and faculty members. (They also noted that they never suggested banning anyone from reading anything, including *The Marketing of Evil*, only that more sensitive choices be made for a book to be assigned to every new student.)

As the e-mails flew across campus, several professors filed internal complaints against Savage, saying that they did not feel they could send gay students to the library to work with him knowing of his attitudes. Savage filed his own complaint, charging with harassment the professors who had criticized him. The university ended up rejecting charges brought against Savage, as well as those he brought. After first requesting and receiving a leave, Savage resigned. But in his lawsuit, he charged that he was effectively forced out by the lack of support he received, and suggested that the criticism he received violated his free speech rights and that the university's anti-bias rules were used to censor him.

William O. Bertelsman, a federal judge, rejected all of those charges. In his decision, he wrote that there was no evidence that Savage didn't freely resign, and noted that his supervisor defended his right to hold controversial views.

"Thus, the fact that Savage felt wounded by the criticism of several faculty members and unnerved by their challenge to his professionalism does not create an objectively 'intolerable' working environment, given that he had the strong support of his immediate supervisor and no indication from the dean that his job was in jeopardy," the judge found.

The academic freedom questions were more complicated and involved an interpretation of the Supreme Court's ruling in *Garcetti* v. *Ceballos*, a suit by a deputy district attorney in Los Angeles who was demoted after he criticized a local sheriff's conduct to his supervisors. In the ruling, the Supreme Court found that public employees, when speaking as part of their official duties, do not have the same First Amendment rights as citizens who speak out on various issues. Faculty groups had feared that such a ruling would limit the academic freedom of faculty members at public colleges and universities, and Justice David Souter raised this issue in a dissent in the case.

But Justice Anthony Kennedy, in the opinion in the case, suggested that the ruling need not apply to cases involving academic freedom. "There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching."

While that aside pleased faculty groups, they say that judges have started to ignore it and to apply *Garcetti* to public college faculty members in dangerous ways. In the Ohio State Mansfield case, the judge recognized that academic freedom issues could be relevant, but said that that they aren't a factor in cases of the work of a faculty committee.

Judge Bertelsman noted that Justice Kennedy specifically cited professors' scholarship and teaching as potentially work that should not be covered. "The *Garcetti* court recognized no broader exception to the rule it propounded," Bertelsman wrote. "Savage's recommendation of a book for a book list cannot, in the opinion of this court, be classified as 'scholarship or teaching,' however. The recommendation was made in the line of duty, but it was made pursuant to an assignment to a faculty committee. This court holds that, without exceptional circumstances, such activities cannot be classified as 'scholarship or teaching' in the *Garcetti* sense." (Generally, faculty groups argue that governance activities require the same commitment to free speech as do research and teaching, but that argument didn't sway the judge.)

David French, senior counsel of the Alliance Defense Fund, a group that has defended the rights of religious individuals and that backed Savage in this case, said via e-mail: "We are disappointed that the federal district court applied Garcetti to further limit academic freedom."

Adam Kissel of the Foundation for Individual Rights in Education, said: "Debate over which book should be assigned to students is an academic matter protected by academic freedom. The overall e-mail conversation, however, seems to have strayed far beyond that topic."

Ohio State officials said they were pleased with the ruling. Many of the faculty members who sparred with Savage said that they felt personally vulnerable in the case as they were criticized by some for being anti-Christian. Many also said they felt the case was an attempt to undercut their academic freedom to reject the selection of an offensive, anti-gay book—and that the publicity that the case received was an attempt at intimidation.

One faculty member who was involved in the case, and who asked not to be identified, said via e-mail: "In this sound, astute decision, the court affirms that the university's harassment policy was never used—ever—to punish Savage's speech. It determines that Savage quit his job voluntarily and was not discharged. It upholds the conduct of both the administration and faculty in exercising their own responsibilities and freedoms as perfectly consistent with the law. Given the reams of distorted media coverage about this case, this outcome could not be taken for granted, although we had every reason to expect it, based on the facts. We're very happy that the judge apprehended the matter so clearly. This is a terrific day for the state of Ohio, Ohio State University, and academic freedom."

In the end, at Mansfield, Savage's proposed book for freshmen was never assigned. They read David K. Shipler's *The Working Poor*. Reported in: insidehighered.com, June 8.

Laramie, Wyoming

A judge who served as a Marine in Vietnam ruled April 27 that the University of Wyoming must allow William Ayers to speak on campus, but also expressed disdain for an anti-war group co-founded by the former radical that claimed responsibility in the 1960s for a series of nonfatal bombings.

U.S. District Court Judge William Downes issued his ruling, saying a free society must both exercise and guarantee free speech rights.

"I can scarcely swallow the bile of my contempt" for the Weather Underground, the judge said. "But the fact is Mr. Ayers is a citizen of the United States who wishes to speak, and he need not offer any more justification than that."

Ayers, a professor at the University of Illinois-Chicago, co-founded the Weather Underground during the Vietnam War era. The university had cited safety concerns in not allowing him to speak at a campus event in April. But Downes said that the threats of violence the university reported receiving were too vague to warrant denying Ayers' right to speak on campus.

During the court hearing, an attorney for Ayers said security concerns were overblown and the university was more worried about losing donations.

"The heart of the issue was whether as president of the university, I can cancel a speaking engagement if I believe there are overriding safety concerns for the university community," UW President Tom Buchanan said in a prepared statement.

Buchanan said there were numerous implied and direct threats leveled in calls and e-mails to the university, "unlike anything I have seen in my thirty years" at UW. He said he feared that if Ayers were to come, there was a good possibility that there would be violence on campus, and the appropriate response to assure a safe and secure campus for students and employees was to prevent Ayers from speaking at the sports complex.

Under questioning Buchanan also disclosed that a number of UW supporters had threatened to cease contributing money to the university. He specifically noted John Martin of Casper, who has donated millions to UW in recent years.

Buchanan also noted that three members of the UW

board of trustees—Betty Fear, Brad Mead and Taylor Haynes—had expressed their displeasure about the prospect of Ayers speaking on campus. Other trustees spoke in support, however.

Laramie Police Chief Dale Stalder told the court that the university never reported threats of violence to his police department despite years of cooperation and intelligence sharing between the agencies. Stalder testified under subpoena after the Laramie city attorney unsuccessfully tried to prevent Stalder from talking.

Ayers originally was invited to speak at the university in Laramie on April 5 by the privately endowed UW Social Justice Research Center. But the center's director canceled the event after the invitation drew hundreds of protests. Student Meg Lanker then extended an invitation to Ayers to speak at the school, but the university refused to rent out a sports complex for the event. Lanker and Ayers filed a lawsuit against the school, saying it violated their constitutional rights to free speech and assembly.

In the end, the former 1960s radical delivered a professional speech that drew more than a thousand listeners and very few protesters.

Security was tight as Ayers spoke on education concerns April 28 at the University of Wyoming. The event, which included bag and coat searches and bomb-sniffing dogs, was held without any incidents at a campus gym that normally hosts volleyball and wrestling matches.

Ten protesters gathered in a snow storm outside where Ayers spoke, carrying American flags and denouncing Ayers for his anti-war activities in the Vietnam era.

Chesney Rathbun, a UW senior from Hulett, Wyoming, held a sign reading "Millions of veterans died for this?!?" The sign had pictures of the Pentagon and what appeared to be a mug shot of Ayers. Rathbun said he agreed with Ayers' right to speak, but opposed Ayers' viewpoints.

"Terrorism is not welcome here," Rathbun said. "Millions of veterans died for the freedoms that our beautiful country affords them, and he's taking advantage of (those freedoms)."

Ayers briefly commented about his First Amendment fight with the university at the start of his 50-minute address, but the bulk of his talk focused on his expertise in education issues and how the best education opportunities should be available to rich and poor alike.

The hour-long question session that followed also mainly dealt with education issues, and people began to trickle out of the gym. But to a few questions on his Weather Underground days, Ayers acknowledged that some of its actions were despicable and set a bad example. But he stressed that that was in the context of thousands of people being killed each week in Vietnam.

The reaction to his appearance contrasted with a visit by former Vice President Dick Cheney in September after donating $3.2 million to help build an international center on campus. Cheney was welcomed by the college administration with open arms, but heckled during his remarks by about 100 protesters in a crowd of about 500.

When Ayers spoke, he had no interruptions from about a dozen protesters among the roughly 1,100 people who showed up.

"A donor who gives to the University of Wyoming—just as a donor who gives to the University of Illinois or the University of Chicago or Harvard or Yale or the University of California—gives to the idea of the university," Ayers said. "That donor doesn't get to say 'By the way, you have to hire this professor and this is the book the professor has to teach out of.' What kind of university would that be?"

Ayers' past became a political issue during the 2008 presidential campaign because President Barack Obama had served with Ayers on the board of a Chicago charity. Republican vice presidential candidate Sarah Palin accused Obama of "palling around with terrorists."

Obama has condemned Ayers' radical activities, and there's no evidence they were ever close friends or that Ayers advised Obama on policy. Other universities have canceled Ayers speeches recently, including the University of Nebraska and Boston College.

"In those two instances the students didn't decide to push it, and in this instance a student decided to push it, and I joined that effort," Ayers said. Reported in: *Casper Tribune*, April 26: *Modesto Bee*, April 28, 29.

Internet

Washington, D.C.

A federal appeals court ruled April 6 that regulators had limited power over Web traffic under current law. The decision will allow Internet service companies to block or slow specific sites and charge video sites like YouTube to deliver their content faster to users.

The court decision was a setback to efforts by the Federal Communications Commission to require companies to give Web users equal access to all content, even if some of that content is clogging the network.

The court ruling, which came after Comcast asserted that it had the right to slow its cable customers' access to a file-sharing service called BitTorrent, could prompt efforts in Congress to change the law in order to give the FCC explicit authority to regulate Internet service. That could prove difficult politically, however, since some conservative Republicans philosophically oppose giving the agency more power, on the grounds that Internet providers should be able to decide what services they offer and at what price.

More broadly, the ruling by the United States Court of Appeals for the District of Columbia Circuit could raise obstacles to the Obama administration's effort to increase Americans' access to high-speed Internet networks.

For example, the national broadband plan released by the administration in March proposed to shift billions of

dollars in money from a fund to provide phone service in rural areas to one that helps pay for Internet access in those areas. Legal observers said the court decision suggested that the FCC did not have the authority to make that switch.

The FCC will now have to reconsider its strategy for mandating "net neutrality," the principle that all Internet content should be treated equally by network providers. One option would be to reclassify broadband service as a sort of basic utility subject to strict regulation, like telephone service. Telephone companies and broadband providers have already indicated that they would vigorously oppose such a move.

The appeals court's 3–0 decision, which was written by one of the court's more liberal members, Judge David S. Tatel, focused on the narrow issue of whether the FCC had authority to regulate Comcast's network management practices. But it was a clear victory for those who favor limiting the FCC's regulation of the Internet, said Phil Kerpen, a vice president at Americans for Prosperity, a group that advocates limited government. "The FCC has no legal basis for imposing its dystopian regulatory vision under the net neutrality banner," he said.

As a practical matter, the court ruling will not have any immediate impact on Internet users, since Comcast and other large Internet providers are not currently restricting specific types of Web content and have no plans to do so.

Comcast, the nation's largest cable provider, had a muted reaction to its victory. The company said it was gratified by the court's decision but added that it had changed the management policies that led it to restrict access to BitTorrent, a service used to exchange a range of large data files, from pirated movies to complex software programs.

"Comcast remains committed to the FCC's existing open Internet principles, and we will continue to work constructively with this FCC as it determines how best to increase broadband adoption and preserve an open and vibrant Internet," Comcast said in a statement.

The company is currently seeking federal approval for its proposed acquisition of a majority stake in NBC Universal, the parent of the NBC broadcast network and a cadre of popular cable channels. Some members of Congress and consumer groups have opposed the merger, saying that it would enable Comcast to favor its own cable channels and discriminate against those owned by competitors—something the company has said it does not intend to do.

After the ruling consumer advocates voiced similar concerns about Comcast's potential power over the Internet, saying that the company could, for example, give priority to transmission of video services of NBC channels and restrict those owned by a competitor like CBS.

"Internet users now have no cop on the beat," said Ben Scott, policy director for Free Press, a nonprofit organization that supported the FCC in the case.

Julius Genachowski, the chairman of the FCC, had said previously that if the agency lost the Comcast case, he would seek to find other legal authority to implement consumer protections over Internet service. In a statement, the FCC said it remained "firmly committed to promoting an open Internet."

While the court decision invalidated its current approach to that goal, the agency said, "the court in no way disagreed with the importance of providing a free and open Internet, nor did it close the door to other methods for achieving this important end."

The concept of equal access for all Internet content is one that people who favor some degree of FCC regulation say is necessary not only to protect consumers but also to foster innovation and investment in technology.

"You can't have innovation if all the big companies get the fast lane," said Gigi B. Sohn, president of Public Knowledge, which advocates for consumer rights on digital issues. "Look at Google, eBay, Yahoo—none of those companies would have survived if fifteen years ago we had a fast lane and a slow lane on the Internet."

The court's ruling could potentially affect content providers like Google, which owns YouTube, a popular video-sharing service. Content providers fear that Internet service companies will ask them to pay a fee to ensure delivery of material like high-definition video that takes up a lot of network capacity.

Google declined to comment directly on the ruling but pointed to the Open Internet Coalition, of which it is a member. The coalition's executive director, Markham Erickson, said the decision "creates a dangerous situation, one where the health and openness of the Internet is being held hostage by the behavior of the major telco and cable providers."

Sam Feder, a lawyer who formerly served as general counsel for the FCC, said that the court's decision "is the worst of all worlds for the FCC." He said the opinion was written narrowly enough that it was unlikely to be successfully appealed, while also raising enough possibilities of other ways that the FCC could accomplish the same goals that it was unlikely to inspire Congressional action to give the agency specific regulatory authority over the Internet.

Under the Bush administration, the FCC largely deregulated Internet service. But in 2008, the final year of the administration, the agency decided to impose the net neutrality order on Comcast. Under President Obama, the FCC has broadened that initiative, seeking to craft rules governing the entire industry.

The ruling was the latest in a string of court decisions that rebuffed efforts by the FCC to expand its regulatory authority, noted Eli M. Noam, a professor of finance and economics at the Columbia University graduate business school and the director of the Columbia Institute for Tele-Information.

"The FCC is going to have to be more careful in how it proceeds," he said, suggesting that the agency would have to structure policy decisions that were more broadly acceptable to the major telecommunications industry players in order to give them some legitimacy.

Andrew M. Odlyzko, a professor at the University of Minnesota who has served as director of the university's Digital Technology Center, said that while some service providers might jump at the opportunity to establish toll roads for broadband, the biggest companies, including Comcast and Verizon, have said they do not intend to do so. Reported in: *New York Times*, April 6.

Cincinnati, Ohio

An Ohio statute which imposes fines and prison terms for providing non-obscene, sexually-explicit material to minors cannot be applied to communications on websites, in public chatrooms, and through email listservs and mailing lists, a federal appeals court ruled April 15. The case was *American Booksellers Foundation for Free Expression* v. *Strickland*.

"Today's decision is a victory for free speech," said David Horowitz, Executive Director of Media Coalition, an association that defends the First Amendment rights of mainstream media, whose members include many of the plaintiffs in the Ohio litigation. "The narrow construction of the statute recognizes that the First Amendment protects the right of adults to use websites, email listservs, email mailing lists, and public chatrooms for communications which might be inappropriate in a one-to-one communication with a minor."

The United States Court of Appeals for the Sixth Circuit, sitting in Cincinnati, ruled that Ohio's "harmful to minors" statute should be construed narrowly. The court held that persons could be prosecuted for sending sexually-explicit, non-obscene material to minors through "personally directed" electronic communications, such as person-to-person email, and in private chatrooms, just as they can be prosecuted for giving such materials to a minor in person. But the court also held that the statute could not be used to prosecute persons who post such materials on websites or in public chatrooms, or transmit them through email listservs or mailing lists.

Persons convicted of violating the law with non-obscene materials can be imprisoned up to six months or fined $1,000, and those convicted of violating the law with obscene material can be imprisoned up to eighteen months or fined $5,000.

The ruling came in a lawsuit brought by mainstream website publishers, newspapers, book publishers, booksellers, and music and video retailers. The lawsuit initially challenged an earlier version of the statute which imposed criminal penalties for the electronic transmission, to minors, of a wide range of materials protected by the First Amendment—including not only non-obscene, sexually-explicit materials, but also materials that use "foul language" or depict or describe nudity, extreme violence, or criminal activity.

After United States District Court Judge Walter Herbert Rice in 2002 ruled against that broader statute, the Ohio legislature narrowed the statute, limiting it to non-obscene, sexually-explicit material. In 2007, Judge Rice again found that the law was too broad, and unconstitutionally interfered with legitimate adult-to-adult online communications.

When the State of Ohio appealed to the federal appeals court, the Ohio Attorney General decided not to defend the full breadth of the statute, and suggested that the statute should be construed narrowly, and limited to one-to-one

communications such as emails, instant messages, and messages in private chat rooms. The Ohio Attorney General conceded that there is no method, in generally-accessible websites and public chatrooms, to exclude minors from adult-to-adult communications, which are protected by the First Amendment. In response to certified questions posed by the federal appeals court, the Ohio Supreme Court adopted the Attorney General's narrow construction of the statute.

"We should certainly have in place adequate legal safeguards to shield children from objectionable content, but those safeguards cannot unreasonably interfere with the rights of adults to have access to materials that are protected by the First Amendment," said Michael Bamberger of Sonnenschein Nath & Rosenthal LLP, general counsel of Media Coalition, who represented the plaintiffs in the Ohio case.

Bamberger said that the case represented two victories for First Amendment rights. "This lawsuit made the Ohio legislature recognize that the original law's restrictions on the use of foul language, or the depiction or description of violence or criminal activity, violated freedom of speech. After years of litigation, the Ohio Attorney General declined to defend the full breadth of the statute, and recognized that the statute should be construed narrowly . . . and limited to personally directed communications, directed to a minor."

Horowitz noted that parental controls software, preloaded in many computers and also available online, enables parents to block access to sexually explicit materials on the Web, to prevent minors from giving personal information to strangers by email or in chat rooms, and to maintain a log of all online activity on a home computer.

Members of Media Coalition have successfully challenged similar restrictions on speech on the Internet in Vermont, Virginia, Arizona, South Carolina, New Mexico and New York. The United States Supreme Court and other courts have regularly found such laws unconstitutional both because they censor valuable speech for adults and because the nature of most Internet communications makes it impossible to exclude minors from such communications.

The appeals court noted the rapidly developing nature of electronic communications, stating, "in determining whether a new communication technology or device is covered under section 2907.31(D), future courts must determine whether that technology is more similar to ones which are personally directed, like an email, or those that are generally accessible, like postings on a public website."

Plaintiffs in the lawsuit included the Freedom to Read Foundation, American Booksellers Foundation For Free Expression, Association of American Publishers, National Association of Recording Merchandisers, The Sexual Health Network, Inc., Video Software Dealers of America (now Entertainment Merchants Association), and the Ohio Newspaper Association. Reported in: Media Coalition press release, April 15. □

(is it legal? . . . from page 174)

oversight protections for four years.

The full Senate has yet to vote on the bill. The House Judiciary Committee also approved a PATRIOT Act extension bill that has since stalled on the House floor. The House bill includes the civil liberties and oversight protections, but the legislation would only renew the records and "roving wiretap" authorities.

The House and Senate bills also call for more restrictions on the use of national security letters, which are used by the FBI to obtain evidence without a court order.

In the letter, Fine said the review would look into the use of national security letters and the business records provision of the PATRIOT Act, as well as other issues.

A Justice Department Inspector General report released in January found that the FBI inappropriately secured phone records through informal requests by post-it notes, telephone, e-mails and what the FBI called "sneak peeks."

With the provisions set to expire at the end of 2009, Congress temporary extended the powers through February 28, 2011, but did not include any of the proposed civil liberties and oversight provisions. Reported in: mainjustice.com, June 16.

libel

New York, New York

If you're an author confronted with a negative book review, you have several options. You can write an angry letter to the editor. You can complain to friends and family about the reviewer's lack of discernment. You can decide that bad publicity is better than no publicity at all and let the book speak for itself.

What you don't do is sue the editor of the newspaper or journal that published the review.

So it came as a shock to journal editors to learn that one of their own, Joseph H.H. Weiler, editor of the *European Journal of International Law*, would face a criminal-libel lawsuit in France over a review that he published on a Web site that he also edits, one that posts reviews of scholarly books.

Although the case is so unusual that it seems unlikely to set a precedent that would seriously dampen academic reviewers' freedom of critique, that possibility still has editors worried. And it has left observers scratching their heads over why a scholar would choose to dispute a review in court and not in the usual arenas of academic debate.

First the details. The plaintiff is Karin N. Calvo-Goller, a lawyer and senior lecturer at the Academic Center of Law & Business, a college in Israel. The defendant, Weiler, is a professor of law at New York University. In addition

to editing EJIL, he runs the Global Law Books Web site, which in spring 2006 published a short review of Calvo-Goller's book *The Trial Proceedings of the International Criminal Court* (Martinus Nijhoff). The reviewer was Thomas Weigend, a professor of law at the University of Cologne and director of the Cologne Institute of Foreign and International Criminal Law.

In an editorial in the law journal, Weiler reprinted a long exchange of letters with Calvo-Goller, in which she asked him to remove Weigend's review from the Web site. "The review is defamatory for my reputation, information contained in the review is false," she wrote.

Weiler declined to remove the review, arguing that it was not libelous, and offering her the chance to write a comment that could be posted on the Web site alongside the review. She again asked him to take down the review; he again declined. In 2008 he received a subpoena to appear in court. (The exchange doesn't explain why Calvo-Goller brought the suit in France, but she does note that the European Union's standards of freedom of expression are not as broad as those in the United States.) Weigend, the reviewer, was not subpoenaed.

"I very much hope that we will prevail before the Criminal Tribunal of Paris," Wieler writes in his editorial. "Any other result will deal a heavy blow to academic freedom and change the landscape of book reviewing in scholarly journals, especially when reviews have a cyber presence as is so common today.".

"It's the kind of mildly critical book review you would see in any academic journal," said Kevin Jon Heller, a senior lecturer at the University of Melbourne's law school. "That's what shocked me the most." Heller made his feelings about the case clear in a post on the Opinio Juris blog headlined "Criminal Libel for Publishing a Critical Book Review? Seriously?"

As the book-review editor of the *New Criminal Law Review* from 2007 to 2009, Heller had his share of dealings with aggrieved authors. But he said he has never heard of a case like this one. "I don't think, for 99 percent of the legal academy, it would ever cross their minds to do this. It's just so fundamentally antithetical to the academic project. Everybody I've spoken to is just shocked and horrified."

Lori Fisler Damrosch and Bernard H. Oxman, editors in chief of the *American Journal of International Law* have heard worries from the journal's board of editors over what the Weiler case might mean for academic freedom and the scholarly exchange of ideas. Damrosch said the case also raises "an area of new concern"—the possibility that a review published online could vanish altogether if an angry author succeeds in having it removed. "We haven't had to confront those questions before," she said. Now "there are impermanent as well as permanent forms of these publications."

Damrosch and Oxman shared two statements about the case being circulated by the executive boards of the European Society of International Law and the French Society for International Law. "The board is convinced that the book review which is the subject of this lawsuit is well within the scope of regular academic discourse," the European society said. "The board wishes to underline that critique is the essence of scholarship, and is indeed a necessary feature of the work of academics and scholars."

It's not clear how likely Calvo-Goller is to prevail in court. François H. Briard, a lawyer who tries cases in France's Supreme Court, said: "Usually there is no libel between academics, unless there is true insult." But "the courts are quite protective of honor and reputation. If real harm is done, I mean quite a high level of bad appreciation [negative comment] on the person, the only way for the writer not to be convicted is to plead 1) I did this with entire good faith, for example relying on public facts or wrong information; 2) the appreciation made relies on true facts."

Damrosch pointed out that whatever the outcome, Weiler still faces the financial and psychological wear and tear of a court proceeding—not a pleasant prospect.

What does Weigend, the author of the review at stake, make of all this? He seems as taken aback as anyone, saying he cannot add much to what Weiler has already made public. "In particular, I have never had any personal connection whatsoever to Ms. Calvo-Goller," Weigend said. "I have been much surprised by the legal action she has brought in France and have no idea what the possible outcome may be." Reported in: *Chronicle of Higher Education* online, April 25.

privacy

Washington, D.C.

A long-awaited draft of a Congressional bill would extend privacy protections both on the Internet and off line, but privacy advocates said the bill did not go far enough in protecting consumers.

The draft legislation was released May 4 by Representatives Rick Boucher (D-VA) and Cliff Stearns (R-FL). Boucher is the chair of the House subcommittee on communications, technology and the Internet, and Stearns is the panel's ranking minority member. The two lawmakers will collect comments on the draft, and hope to have formal legislation introduced within a month or so, Boucher said in an interview.

Consumer groups have been fighting what they see as the prevalence of online tracking, where online advertising is selected for a certain user—perhaps because he once visited a company's home page, perhaps because he showed an interest in automobiles or baby products, or perhaps because he is a middle-aged man.

As opposition has intensified, companies like Google and Yahoo have adjusted their own privacy policies in response to consumer concern. Industry groups, while

arguing that free Internet content depends on this type of sophisticated advertising, have issued their own self-regulatory principles.

This, though, "would be the first law that applies generally to businesses requiring privacy notice, particularly in the offline space," said Lisa J. Sotto, a partner at Hunton & Williams who heads the law firm's privacy and information management practice. "This bill represents a sea change."

Right now, Sotto said, there is no national legislation governing how companies tell consumers that they are collecting data, but companies do post privacy notices because certain state laws require it.

The proposed bill would expand what information should be considered confidential. It would require companies to post clear and understandable privacy notices when they collected information. Such information could range from health or financial data to any unique identifier, including a customer identification number, a user's race or sexual orientation, the user's precise location or any preference profile the user has filled out. It could also include an Internet Protocol address, the numerical address assigned to each computer connecting to the Internet that many companies use now to aim particular messages at users, which the companies argue is not personally identifiable.

Essentially, companies would need to alert consumers whenever any information the companies are collecting can identify a single person or a single computer or device.

"This bill, were it to pass, would get us closer to the more stringent privacy regimes that we see in other countries," Sotto said.

Significantly, the bill also requires companies to advise consumers even when they are collecting any of that information off line, which could include data houses and direct marketers. The online and off-line privacy notices would have to include a description of the information being collected, why the company was collecting that information, how that information might be linked or combined with other data about the individual or computer, and why the company would disclose that information and to what types of other companies, among other requirements.

Mike Zaneis, vice president for public policy for the trade group Interactive Advertising Bureau, said that some of these definitions and requirements were "overly broad." For instance, including an I.P. address in covered information would be a huge "change to existing laws here in the U.S. and would potentially have widespread implications."

Boucher said that "our goal is to enhance electronic commerce—we are not seeking in any way to disable targeted advertising." He added, "We are largely tracking the best business practices that exist among the most consumer-oriented companies today."

In a conference call with reporters, representatives from privacy and consumer groups said the draft included several loopholes that might let companies track consumers too closely. There was an exemption from the disclosure requirements for what was called "operational" (defined as "a purpose reasonably necessary for the operation" of the company) or "transactional" (defined as "a purpose necessary for effecting, administering or enforcing" a transaction between company and customer). Those exceptions were "troubling," said Peter Eckersley, senior staff technologist for the Electronic Frontier Foundation, one of these groups.

Privacy advocates said they were disappointed that this approach relied on a privacy policy, which few site visitors actually read. Reported in: *New York Times*, May 5.

Washington, D.C.

The Federal Trade Commission said April 27 that it plans to create guidelines on Internet privacy, amid a growing cry by privacy advocates and lawmakers to protect consumers from abuse of their personal data by social networks, search engines and location tracking on cellphones.

The comments came after four senators called for greater enforcement and rules at the FTC, with troubling business features on social networking site Facebook that they said exposed users' information to the public and to third-party advertisers trying to create profiles on those users.

"We agree that social networks provide a valuable consumer service, but that they also raise privacy concerns," said Cecelia Prewett, a spokeswoman for the FTC, who declined to comment specifically on the senators' complaints about Facebook. "The FTC is examining how social networks collect and share data as part of a project to develop a comprehensive framework governing privacy going forward. Our plan is to develop a framework that social networks and others will use to guide their data collection, use and sharing practices."

The complaints by the lawmakers, users and privacy groups have increased in recent months with the advent of new technologies like location-based services such as Foursquare, which allow sites to track users' location and spending activity through cellphones. A change in privacy setting policies at Facebook late last year and a mishap on Google's Buzz social network that exposed e-mail contacts to the public have added to concerns that users are flocking to these Web sites without a strong federal guardian of privacy.

With advertising as the primary means of drawing revenue for their Web businesses, the desire to draw more detailed and tailored profiles of users will only continue to rub against the comfort levels of consumers and Washington's desire to regulate those activities.

"This is a whole new world," said Sen. Charles Schumer (D-NY) in a news conference. "The onus here should be on Facebook, not on the user. Social networking sites have become the Wild West of the Internet."

Changes at Facebook made data from its users available to third parties unless a user opted out, the lawmakers said. Schumer and fellow Democratic Sens. Al Franken (MN), Michael Bennet (CO) and Mark Begich (AK) sent a letter to Facebook CEO Mark Zuckerberg asking him to reverse those policies. They also called for the FTC to take up new rules and step up enforcement of companies that harm consumer by misusing their private information.

In the letter, Schumer wrote that changes to Facebook's privacy policies "have limited the ability of users to control the information they share and keep private.

"These changes can adversely affect users and, currently, there is little guidance on what social networking sites can and cannot do and how disclosure is provided," he wrote.

Schumer said the problem applies to other social networking sites as well. He offered to introduce legislation if the FTC, whose missions include policing anticompetitive business practices and protecting consumers, felt it needed additional authority to create such guidelines.

With 400 million users, Facebook is the largest social networking site in the world, where people form miniature networks where they share pictures, personal musings, videos and information about their backgrounds with "friends" they connect with at the site.

In April, the company partnered with 75 companies, including *The Washington Post* and CNN, to allow their users to take their networks to other sites. The lawmakers said those business partnerships posed troubling questions on what information was being shared with the third-party sites.

Facebook agreed to let third-party companies retain information about its users indefinitely, a shift from previous policies that forced businesses to purge that information after 24 hours.

And the lawmakers questioned changes to its privacy settings late last year, which automatically made profile information publicly available unless a user opted out of that default setting.

"Folks who've put information out that they may not want shared with the entire world are put in the position where they have to opt-out. Now I would read what you have to do to opt-out, but we really only have so much time," Franken said at the news conference.

Facebook said it isn't sharing information with third-party sites. "Specifically, these new products and features are designed to enhance personalization and promote social activity across the Internet while continuing to give users unprecedented control over what information they share, when they want to share it, and with whom," Elliot Schrage, Facebook's vice president of communications and public policy, wrote in a letter responding to the lawmakers. "All of Facebook's partner sites interact with a user's consent."

Facebook spokesman Andrew Noyes said the company was "surprised" by Schumer's comments and looked forward to "sitting down with him and his staff to clarify."

He said the new products and features, announced on April 21, were designed to "enhance personalization and promote social activity across the Web.

"None of these changes removed or reduced people's control over their information, and several offered even greater controls," he said.

Among the new features were plug-ins allowing partner sites to add to their pages "like" buttons, which users can click to automatically notify their friends of their approval. For instance, a user visiting a movie site can click on a "like" button to mark a preference for a film, which then appears on that user's Facebook profile.

Some privacy advocates say that the FTC hasn't responded to complaints over Facebook's privacy changes last December and a mishap by Google when it launched its social networking application Buzz. In February, Google launched Buzz through Gmail users' accounts and for those that agreed to try it, their e-mail contact lists became public to other users of the application.

"It's becoming increasingly clear that the FTC is a black hole for user concerns about online privacy," said Mark Rotenberg, executive director of the Electronic Privacy Information Center.

Meanwhile, four students at New York University's Courant Institute of Mathematical Sciences announced plans to create an alternative to current social media that lets users better control their privacy.

Diaspora is a planned personal Web server that stores information to be shared with friends securely. Instead of centralized social media, such as Facebook, the server is meant to provide a more secure, decentralized network.

"We believe that privacy and connectedness do not have to be mutually exclusive," says the team's page on Kickstarter, a site that offers projects for outside financing. "With Diaspora, we are reclaiming our data, securing our social connections, and making it easy to share on your own terms."

According to the team's Web site, a basic prototype of Diaspora has been developed, and the team hopes to have the project widely available by September 2010. More than 600 people have pledged to contribute to the project, for about double its $10,000 goal. The team chose to raise money because the students involved want to focus on building Diaspora instead of taking summer internships.

"Once we have made our first solid iteration, we are going to release our code as free software so everyone can make Diaspora even better," the site reads. "$10,000 buys the software for everyone who wants to use it, forever.

"We think it can change the way people communicate and empower individuals to permanently take control of their online identities." Reported in: *Washington Post*, April 27; *Los Angeles Times*, April 27; Huffington Post, April 26: *Chronicle of Higher Education* online, May 10. □

intellectual freedom bibliography

Compiled by Angela Maycock, Assistant Director, Office for Intellectual Freedom

Baule, Steven M. "Revisiting Filtering." *Library Media Connection*. Vol. 28, no. 5, March/April 2010, pp. 48–49.

Bernstein, Marc. "Is the Library the Sacred Cow?" *American School Board Journal*. Vol. 197, no. 4, April 2010, pp. 68–69.

Celano, Donna C. and Susan B. Neuman. "How to Close the Digital Divide? Fund Public Libraries." *Education Week*. Vol. 29, no. 28, April 7, 2010, p. 33.

"Congressional Draft Privacy Bill Released." *Library Hotline*. Vol. 39, no. 19, May 17, 2010, pp. 4–5.

"Court Overturns Video Case." *Publishers Weekly*. Vol. 257, no. 17, April 26, 2010, p. 6.

Darden, Edwin C. "A Red Alert About Abuse." *American School Board Journal*. Vol. 197, no. 4, April 2010, pp. 58–59.

Gutman, Dan. "How I Corrupted America's Youth." *School Library Journal*. Vol. 56, no. 5, May 2010, pp. 28–31.

Harris, Christopher. "Friend Me?" *School Library Journal*. Vol. 56, no. 4, April 2010, p. 16.

Johnson, Lamar. "Take the Plunge." *American School Board Journal*. Vol. 197, no. 4, April 2010, pp. 52–53.

Manjoo, Farhad. "Multiple Choice." *Fast Company*. No. 145, May 2010, pp. 42–43.

Martin, Justin D. "Journalism Education in the Arab World." *The Chronicle Review*. Vol. 56, no. 29, April 2, 2010, pp. B9–B10.

Robelen, Erik W. "Rewriting of States' Standards on Social Studies Stirs Debate." *Education Week*. Vol. 29, no. 27, March 31, 2010, pp. 1, 18–19.

Scales, Pat. "Scales on Censorship: Mature Content." *School Library Journal*. Vol. 56, no. 5, May 2010, p. 18.

Scales, Pat. "Scales on Censorship: Success Stories." *School Library Journal*. Vol. 56, no. 3, March 2010, p. 19.

Siegrist, Kelley. "Book Review: Bodart, Joni Richards. Radical Reads 2: Working with the Newest Edgy Titles for Teens." Scarecrow, 2010. 479p. $45 (ISBN 978-0-8108-6908-0). *School Library Journal*. Vol. 56, no. 5, May 2010, p. 144.

"Study: Library Computers Serve Key Ed. Role." *Education Week*. Vol. 29, no. 28, April 7, 2010, p. 10.

"WA Supreme Court Backs Full Filtering for Adults." *Library Hotline*. Vol. 39, no. 19, May 17, 2010, p. 1.

"Webcams Posing Policy Conundrum." *Education Week*. Vol. 29, no. 28, April 7, 2010, p. 24.

Zirkel, Perry A. "In Rob We Trust." *Phi Delta Kappan*. Vol. 91, no. 8, May 2010, pp. 76–77.

NEWSLETTER ON INTELLECTUAL FREEDOM

50 East Huron Street • Chicago, Illinois 60611