

newsletter on intellectual freedom



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poll shows growing support for book banning

A recent Harris poll on attitudes about book banning and school libraries revealed that out of the 2,244 U.S. adults surveyed in March 2015, the percentage who felt that certain books should be banned increased by more than half since the last similar study conducted in 2011. Twenty-eight percent believe certain books should be banned today, vs. eighteen percent four years ago. One-fourth (24%) are unsure, which leaves less than half of Americans convinced that no books should be banned completely (48%).

Politically speaking, Republicans are nearly twice as likely as Democrats or Independents to believe there are any books that should be banned completely (42% vs. 23% & 22%, respectively). In addition, adults who have completed high school or less are more likely than those with higher levels of education to believe there are any books that should be banned (33%, vs. 25% some college, 24% college grad, 23% post grad).

When asked to consider other types of media, adults are less likely to say there are any movies, television programs, or video games which should be banned completely. Only sixteen percent of Americans each believe there are any movies or television programs that should be banned completely, and one fourth say the same about video games (24%). In light of this, perhaps it's not surprising that seven in ten adults believe a rating system (similar to that used for movies) should be applied to books (71%).

Similar to books, Republicans are more likely than Democrats or Independents to believe there's ever a call for outright bans in each of these categories.

- Movies: 24% Republicans vs. 15% Democrats & 12% Independents
- Television: 23% Republicans vs. 16% Democrats & 12% Independents
- Video games: 32% Republicans vs. 23% Democrats & 20% Independents

Seven in ten Americans expect librarians to prevent children from borrowing materials that are inappropriate for their age (71% each). Perhaps it's this perception of librarians as gatekeepers that leads three-fifths of those surveyed (63%) to believe that children with the ability to read books electronically, without having to borrow them from a library in person, are more likely to read inappropriate materials (62%).

However, for some, a librarian as a roadblock to information access is not enough. Three-fifths of Americans believe children should not be able to get books containing explicit language from school libraries (60%, down 2 points from 2011), while half say

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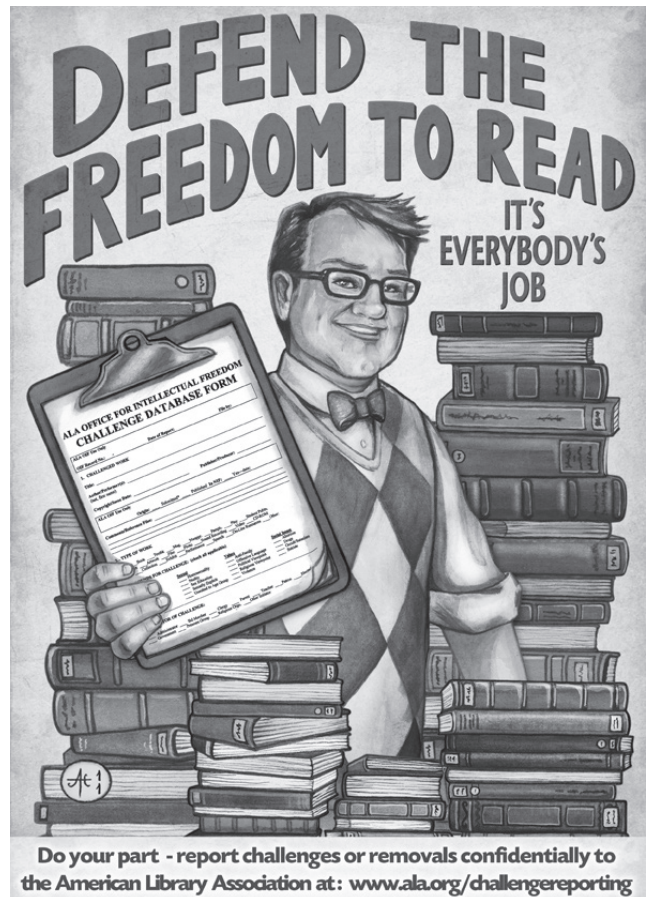
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targets of the censor

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Views of contributors to the *Newsletter on Intellectual Freedom* are not necessarily those of the editors, the Intellectual Freedom Committee, nor the American Library Association.

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IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered June 30 by IFC Chair Doug Archer at the ALA Annual Conference in San Francisco.

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

INFORMATION

We Need Diverse Books and Intellectual Freedom

Eight out of the Top Ten Books challenged in 2014 had themes of diversity and race. What is it about these stories that people want them removed from libraries? Intellectual freedom is being stifled because multiple viewpoints aren't represented.

OIF has collaborated with We Need Diverse Books to provide authors and promotion for two programs at Annual Conference in San Francisco: "Diverse Books Need Us" and "Diverse Authors Need Us." They have also worked with OIF to create a panel for the National Conference of African American Librarians with the help of the Black Caucus of ALA.

The Intellectual Freedom Manual, Ninth Edition

Editor Trina Magi of the University of Vermont has re-imagined and re-designed the 9th Edition of the *Intellectual Freedom Manual* for use as a practical guide for librarians in the field. As part of the redesign, the historical materials will be published as a separate supplement to the manual. It is available for purchase both online and at the ALA Store at Annual.

Challenges to Library Materials Update

- *The Kite Runner* by Khaled Hosseini in North Carolina has been retained
- *Of Mice and Men* by John Steinbeck in Idaho has been retained
- *The Absolutely True Diary of a Part-Time Indian* by Sherman Alexie in Iowa has been removed
- *This Day in June* by Gayle Pitman in Texas has been moved to the adult collection and is being appealed
- *My Princess Boy* by Cheryl Kilodavis in Texas has been retained
- *The Handmaid's Tale* by Margaret Atwood in Oregon has been retained
- *King and King* by Linda De Haan and Stern Nijland in North Carolina has been retained but the teacher who read the book and the assistant principal who provided the book have resigned
- Parent's Rock organization challenged four books in Collier County, Florida: *Dreaming in Cuban* by C. Garcia, *The Bluest Eye* by Toni Morrison, *Killing*

Mr. Griffin by Lois Duncan, and *Beloved* by Toni Morrison. All have been retained.

Online Learning

With the publication of the 9th edition of the *Intellectual Freedom Manual*, OIF hosted a webinar with editors; Trina Magi and Martin Garnar and contributors Deborah Caldwell Stone, Helen Adams, Sarah Houghton and Nanette Perez.

During ALA's School Library Month, OIF coordinated with AASL to profile and celebrate the successful challenge cases of four school librarians.

To help achieve its goal of educating librarians and the general public about the nature and importance of intellectual freedom in libraries, OIF will continue to host webinars on founding principles and new trends of intellectual freedom. Upcoming topics include:

- Advocating Intellectual Freedom: Beyond Banned Books Week
- Embracing the Concerned Parent
- Preparing your Administration
- The Parenting Shelf

Every quarter there are web meetings to connect state IFC chairs and AASL IF affiliates. We discuss state, local, and national intellectual freedom issues; the projects and programs OIF and various chapter IFCs are working on; and how ALA can provide assistance and support to the state IFCs and members of state affiliates.

Privacy Subcommittee

The IFC Privacy Subcommittee completed the Library Privacy Guidelines for E-book Lending and Digital Content Vendors after a lengthy consultation with many other groups and it was approved by the committee and it will be available online. It is attached as additional information.

PROJECTS

Banned Books Week

OIF has partnered with SAGE again this year and hosted a Banned Books Virtual Read-Out booth. Over 200 people participated in the Read-Out. The videos will be made available via the Banned Books Week channel on YouTube at www.youtube.com/bannedbooksweek. OIF and SAGE also coordinated a Banned Books Week photo mosaic. The mosaic featured photos of people holding their favorite banned/challenged novel and was presented during Opening General Session.

Banned Books Week 2015 will take place September 27–October 3. Banned Books Week merchandise, including posters, bookmarks, t-shirts, and tote bags, are sold and marketed through the ALA Store and will be available online in the late Spring. More information on Banned Books Week can be found at www.ala.org/bbooks and www.bannedbooksweek.org.

Choose Privacy Week

Now in its sixth year, Choose Privacy Week (May 1–7) is ALA’s national public awareness campaign that seeks to deepen public awareness about personal privacy rights and the need to insure those rights in an era of pervasive surveillance. Choose Privacy Week is an opportunity for libraries to offer programming, online education and special events in order to give individuals opportunities to learn, think critically and make more informed choices about their privacy.

The theme for this year’s Choose Privacy Week was “Who’s Reading the Reader?” and focused on the privacy of library patrons. It featured a week-long online forum that included guest commentaries by librarians and privacy experts on the challenges of protecting reader privacy. These included Michael Robinson, chair, ALA-IFC Privacy Subcommittee, on the importance of Choose Privacy Week; technologist, entrepreneur and writer Eric Hellman; Alison Macrina of the Library Freedom Project, on personal password security; Marshall Breeding, on online Catalogs, discovery services, and patron privacy; Gretchen McCord, attorney and librarian on aggregated data and anonymity; Michael Zimmer of the University of Wisconsin-Milwaukee’s School of Information Studies, on the NISO Patron Privacy Project to support patron privacy in digital library and information systems; and Erin Berman and Jon Worona of San Jose Public Library, on using games to teach digital privacy literacy.

The IFC Privacy Subcommittee is working with the LITA Patron Privacy Interest Group to develop the themes and programming for next year’s observance of Choose Privacy Week.

ACTION ITEMS

The Intellectual Freedom Committee moves the adoption of the following action items:

- CD # 19.3, Internet Filtering: An Interpretation of the Library Bill of Rights
- CD # 19.4, Labeling Systems: An Interpretation of the Library Bill of Rights
- CD # 19.5, Rating Systems: An Interpretation of the Library Bill of Rights
- CD #42, Resolution Against Mass Surveillance of the American People was referred to COL and IFC during Council I. IFC and COL jointly request that the following resolution be substituted in lieu of CD #42.
- CD # 19.6, Resolution on the Passage of the USA Freedom Act and Reaffirming ALA’s Commitment to Surveillance Law Reform

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

Internet Filtering: An Interpretation of the Library Bill of Rights

In the span of a single generation the Internet has revolutionized the basic functions and operations of libraries and schools and expanded exponentially both the opportunities and challenges these institutions face in serving their users. During this time many schools and libraries in the United States have installed content filters on their Internet access. They have done so for a variety of reasons, not least of which is the requirement to comply with the Children’s Internet Protection Act (CIPA) in order to be eligible to receive federal funding or discounts through the Library Services and Technology Act, Title III of the Elementary and Secondary Education Act, and the Universal Service discount program (E-rate), or to comply with state filtering requirements that may also be tied to state funding. Their rationale for filtering is that it is better to have filtered access than no access.

CIPA specifically requires public libraries and schools seeking E-rate discounts for Internet connections to install technology protection measures, i.e., content filters, to block two categories of visual images that are unprotected by the First Amendment: obscene images and images of child pornography. These are categories of images the Supreme Court has consistently ruled outside the constitutional protection of the First Amendment. CIPA also requires those libraries and schools to block a third category of images for minors under the age of 17 that courts deem “harmful for minors” that are constitutionally protected for adults but not for minors. CIPA does not require libraries and schools to block any other constitutionally protected categories of images, or any constitutionally protected categories of speech.

Research demonstrates that filters consistently both over- and under-block the content they claim to filter. Filters often block adults and minors from access to a wide range of constitutionally protected speech.

Content filters are unreliable because computer code and algorithms are still unable to adequately interpret, assess, and categorize the complexities of human communication whether expressed in text or image. In the case of websites containing sexually explicit images, the success rate of filters is frequently no greater than chance. In addition, the use of content filters cedes vital library and school resource and service decisions to external parties (private companies and contractors) who then exercise unknown and unaccountable influence over basic functions of the library or school and users’ access to library or school resources and services.* In addition to this research, the experience of librarians and educators working within the constraints of CIPA suggests

* Kristen R. Batch. “Filtering Out Knowledge: Impacts of the Children’s Internet Protection Act 10 Years Later.” (*ALA OITP & OIF Policy Brief* No. 5, June 2014).

that filters are unreliable and routinely circumvented by technologically adept users.

Most content filters are designed and marketed for a much larger market than libraries and schools, and offer options for filtering wide categories of protected speech such as objectionable language, violence, and unpopular or controversial opinion, as well as entire categories of Internet-based services such as e-mail and social media. In addition many content filters operate on an “opt out” model where the filter defaults “on” unless the user is given the option to shut it off. Categories frequently are set to default to the most stringent settings and may only be adjusted by administrative intervention.

Unblocking for adults on request was a key factor in the Supreme Court decision to uphold CIPA in public libraries.[†] This has proved to be equivocal in actual practice in some libraries, because of the unwillingness or inability of libraries to unblock when requested, especially when system administrators may be outside of library administrative control. While some filtering systems allow librarians at the local or end user level to modify the filter settings, others restrict that authorization to the highest administrative levels, creating lengthy delays in the processing of user requests to unblock erroneously filtered content.

This same situation also occurs in schools. Such delays represent de facto blocking for both library users and K–12 students, because most users rarely have the flexibility or time to wait hours or even days for resources to become available. This dilemma is exacerbated by the secrecy surrounding category definitions and settings maintained by the filtering industry, frequently under the guise of trade secrets. There are also issues of user privacy when users must identify themselves and their interests when asking for specific websites to be unblocked. Certainly, both adults and students researching highly personal or controversial topics will be reluctant to subject themselves to administrative review in order to have access to information that should be freely available to them.

In schools, the CIPA requirements have frequently been misinterpreted with the result of overly restrictive filtering that blocks many constitutionally protected images and texts. Educators are unable to use the wealth of Internet resources for instruction, and minor students are blocked from content relevant to their school assignments and personal interests. Interactive websites and social media sites are frequently restricted, and are thus unavailable to educators for developing assignments that teach students to live and work in the global digital environment. In many cases students are prevented from creating and sharing their documents, videos, graphics, music and other original content with classmates or the wider world; thus valuable learning opportunities are lost.

[†] *United States v. American Library Association, Inc.*, 539 U.S. 194 (2003).

These situations occur in schools when librarians, educators and educational considerations are excluded from the development and implementation of appropriate, least-restrictive filtering policies and procedures. Minor students, and the librarians and educators who are responsible for their learning experience, should not be blocked from accessing websites or web-based services that provide constitutionally protected content that meets educational needs or personal interests even though some may find that content objectionable or offensive. Minors and the adult educators who instruct them should be able to request the unblocking of websites that do not fall under the categories of images required to be filtered under the Children’s Internet Protection Act.

CIPA-mandated content filtering has had three significant impacts in our schools and libraries. First, it has widened the divide between those who can afford to pay for personal access and those who must depend on publicly funded (and filtered) access. Second, when content filtering is deployed to limit access to what some may consider objectionable or offensive, often minority viewpoints religions, or controversial topics are included in the categories of what is considered objectionable or offensive. Filters thus become the tool of bias and discrimination and marginalize users by denying or abridging their access to these materials.

Finally, when over-blocking occurs in public libraries and schools, library users, educators, and students who lack other means of access to the Internet are limited to the content allowed by unpredictable and unreliable filters.

The negative effects of content filters on Internet access in public libraries and schools are demonstrable and documented. Consequently, consistent with previous resolutions, the American Library Association cannot recommend filtering.[‡] However the ALA recognizes that local libraries and schools are governed by local decision-makers and local considerations and often must rely on federal or state funding for computers and Internet access. Because adults and, to a lesser degree minors, have First Amendment rights, libraries and schools that choose to use content filters should implement policies and procedures that mitigate the negative effects of filtering to the greatest extent possible. The process should encourage and allow users to ask for filtered websites and content to be unblocked, with minimal delay and due respect for user privacy.

Rating Systems: An Interpretation of the Library Bill of Rights

Libraries, no matter their size, contain an enormous wealth of viewpoints and are responsible for making those viewpoints available to all. However, libraries do not

[‡] “Resolution on the Use of Filtering Software in Libraries” (1997) and “Resolution on Opposition to Federally Mandated Internet Filtering” (2001)

advocate or endorse the content found in their collections or in resources made accessible through the library. Rating systems appearing in library public access catalogs or resource discovery tools present distinct challenges to these intellectual freedom principles.

Rating Systems

Many organizations use or devise rating systems as a means of advising either their members or the general public regarding the organizations' opinions of the contents and suitability or appropriate age or grade level for use of certain books, films, recordings, websites, games, or other materials. Rating systems presuppose the existence of individuals or groups with wisdom to determine by their authority what is appropriate or inappropriate for others. Rating systems also presuppose that individuals must be directed in making up their minds about the ideas they examine. The creation and publication of such systems is a perfect example of the First Amendment's right of free speech. However, The American Library Association also affirms the rights of individuals to form their own opinions about resources they choose to read or view.

The adoption, enforcement, or endorsement, either explicitly or implicitly, of any of these rating systems by a library violates the Library Bill of Rights and may be unconstitutional. If enforcement of rating systems is mandated by law, the library should seek legal advice regarding the law's applicability to library operations.

Libraries often acquire resources that include ratings as part of their packaging. Librarians should not endorse the inclusion of such rating systems; however, removing or destroying the ratings—if placed there by the publisher, distributor, or copyright holder—could constitute expurgation (see "Expurgation of Library Materials: An Interpretation of the Library Bill of Rights").

Because AACRII, RDA and the MARC format provide an opportunity for libraries to include ratings in their bibliographic records, many libraries have chosen to do so—some by acceptance of standard records containing such ratings and others by a desire to provide the maximum descriptive information available on a resource. Libraries are not required by cataloging codes to provide this information. However, if they choose to do so, whatever the reason, they should cite the source of the rating to their catalog or discovery tool displays indicating that the library does not endorse any external rating system.

The inclusion of ratings on bibliographic records in library catalogs or discovery tools may be interpreted as an endorsement by the library. Therefore, without attribution, inclusion of such ratings is a violation of the *Library Bill of Rights*.

The fact that libraries do not advocate or use rating systems does not preclude them from answering questions

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council delivered on June 28 at the ALA Annual Conference in San Francisco.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2015 Midwinter Meeting:

LITIGATION

Prison Legal News v. Kane: This spring the Freedom to Read Foundation joined with journalists, booksellers, publishers and others to successfully challenge a Pennsylvania law that allows a victim to sue a convicted offender to stop any conduct—including speech—that causes "mental anguish." Under the law, a district attorney, the Attorney General, or a victim of a personal injury crime can ask a judge to prohibit an offender from engaging in any conduct, including speech, that would cause "a temporary or permanent state of mental anguish" to the victim or otherwise "perpetuate the continuing effect of the crime" on the victim or the victim's family.

The legislative history of the law made it clear that the term "conduct" encompasses speech and that the statute could be used to stop speech by an offender or a third party publishing the speech of the offender or speech produced with the assistance or input from the offender. Statements by state officials also made it clear that the statute was passed directly in response to the outrage expressed by the widow of Philadelphia police officer Daniel Faulkner when she learned that the Mumia Abu-Jamal, who is serving a life sentence for the 1981 shooting of Faulkner, was invited to deliver a recorded commencement address to a Vermont college graduating class.

The Freedom to Read Foundation joined an *amicus curiae* brief drafted by the Reporters Committee for Freedom of the Press that argued that the statute violates the rights of offenders and deprives the public of information that it is willing to receive by allowing a court to issue an injunction barring the distribution of a broad variety of First Amendment-protected material. The brief also highlighted the types of works, in addition to news articles, that would fit within the broad language of the newly enacted statute, including Truman Capote's *In Cold Blood*, Norman Mailer's *The Executioner's Song*, *The Autobiography of Malcolm X*, the documentary *The Thin Blue Line* or the movie *Goodfellas*, based on the book *Wiseguy*. The broad language of the statute could also apply to speeches or talks by offenders such as convicted drunk drivers who then speak to high school students to warn them of the dangers of drinking and driving.

On April 28, 2015, U.S. District Court Chief Judge Christopher Conner struck down the Pennsylvania law, finding the law "manifestly unconstitutional." Conner ruled

that the law is an impermissible content-based restriction and that it is vague and overbroad.

“A past criminal offense does not extinguish the offender’s constitutional right to free expression,” Conner wrote. “The First Amendment does not evanesce at the prison gate, and its enduring guarantee of freedom of speech subsumes the right to expressive conduct that some may find offensive.” The court also held that “the government may not proscribe speech based exclusively on its potential to offend.”

Antigone Books v. Horne: In September, 2014, the Freedom to Read Foundation joined with booksellers, publishers, and photographers to challenge an Arizona statute that makes it a crime to publish, sell, loan or disclose images that include nudity without the depicted person’s consent for each distribution. Although intended to target “revenge porn,” the law, as written, potentially makes criminal the dissemination of a large number of historic, artistic, educational and other newsworthy images.

While the Freedom to Read Foundation strongly condemns the malicious invasion of privacy resulting from “revenge porn,” and supports using legal tools to stop it, the Arizona law goes far beyond criminalizing this reprehensible practice and potentially makes criminally liable anyone who provides access to any image that includes nudity, including newsworthy images such as the iconic image of the “Napalm Girl,” running unclothed from her village during the Vietnam War, or the images of nude prisoners held at Abu Ghraib. Under this law, distributing or otherwise providing access to such materials puts librarians at risk for prosecution for a serious crime punishable by almost four years in prison.

After FTRF and its fellow plaintiffs filed a motion for preliminary injunction asking the district court to block enforcement of the law, attorneys for the State of Arizona sought to stay enforcement of the law and stay the lawsuit itself to allow the Arizona legislature the opportunity to narrow the law in its next legislative session. The legislature failed to act, however, and on May 18, 2015, the plaintiffs renewed their motion for a preliminary injunction. Unless FTRF and its fellow plaintiffs reach a settlement with the state, oral argument on the motion will be heard on August 31. [A settlement agreement ordering the state to cease enforcement of the law was approved by the court on July 10. See page 155.]

Arce v. Huppenthal: We continue to await a decision by the Ninth Circuit Court of Appeals in this lawsuit filed by teachers and students in the Tucson Unified School District (TUSD) against the Arizona Superintendent of Public Instruction and other state officials. [A decision was issued on July 7. See page 153.] The lawsuit challenges the constitutionality of an Arizona statute prohibiting the use of class materials or books that encourage the overthrow of the

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new privacy guidelines encourage libraries and vendors to work together to protect reader privacy

On June 29, 2015, the American Library Association’s Intellectual Freedom Committee approved a new document, “Library Privacy Guidelines for E-book Lending and Digital Content Vendors.” The document, which outlines best practices for vendors to follow to protect the privacy of library users, is intended to encourage vendors and libraries to work together to develop effective privacy protection policies and procedures for eBook lending and the delivery of digital content to library patrons. The document was developed by the IFC Privacy Subcommittee, with input from additional ALA committees, interest groups, and roundtables with an interest in privacy.

“A gap has grown between libraries’ long-standing tradition of protecting privacy and common data management practices that have developed as libraries strive to deliver digital content, embrace the modern Web, and provide personalized services,” said Michael Robinson, chair of the ALA-IFC Privacy Subcommittee, and Head of Systems at the Consortium Library, University of Alaska-Anchorage. “These guidelines attempt to balance the need to protect reader privacy with the needs of libraries to collect user data and provide personalized services, while respecting and protecting the individual’s right to make their own informed decisions in regards to the privacy of their data.”

“Even as libraries transform to offer content via new technologies and delivery systems, librarians remain staunch protectors of patrons’ privacy,” said ALA President Sari Feldman. “These guidelines are an important step in helping libraries work with vendors to develop necessary protections for readers’ privacy.”

The guidelines are now available online on the ALA website <http://www.ala.org/advocacy/library-privacy-guidelines-e-book-lending-and-digital-content-vendors>. The IFC Privacy Subcommittee encourages anyone with comments or questions to send correspondence to its ALA staff liaison, Deborah Caldwell-Stone in the Office for Intellectual Freedom at dstone@ala.org. □

Americans still love libraries

The following was written by author Wayne Wiegand as a complement to his new book, Part of Our Lives: A People’s History of the American Public Library (Oxford University Press, 2015):

Indisputable fact—Americans love their public libraries. Evidence to support this statement abounds. A 2013 report by the Pew Research Center’s Internet and American Life Project noted that in the previous decade “every other major institution (government, churches, banks,

corporations) has fallen in public esteem except libraries, the military, and first responders.” The study also found that 91% of those surveyed over sixteen years old said libraries are “very” or “somewhat” important to their communities, and 98% identified their public library experience as “very” or “mostly positive.” Another Pew study found 94% of parents believe libraries are important for their children; 84% said because libraries develop a love of reading and books.

Although in the 1980s many evangelists of information technology predicted the demise of public libraries by the turn of the century, they’ve been proven wrong. In 2012 (latest year for which we have statistics) the U.S had more public libraries than ever—17,219, including branches and bookmobiles. While the number of visits declined slightly in 2012 from 1.52 to 1.5 billion (the recession forced libraries to reduce hours by 2%; more patrons were downloading library e-books from home computers), the decade nonetheless showed a 21% increase. That same year 93 million Americans attended a public library program, a one-year increase of 4% and an eight-year increase of 38%; 65 million attendees were children, a nearly 4% increase from the previous year and a 24% increase from the previous decade. In 2012 public libraries circulated 2.2 billion items (including audio and video materials and e-books)—a 28% increase from 2003; circulation per capita showed a ten-year increase of 17%. Public libraries also provided users with access to 250,000 Internet-ready computers, 100% more per capita than a decade earlier.

Americans love their public libraries, but why? Historical research shows reasons fit into three broad categories—for the useful information they make accessible; for the public spaces they provide that help construct community; and for the transformative potential that reading, viewing, and listening to the commonplace stories that public libraries provide in a variety of textual forms.

Historical examples for each abound. First, useful information. As a Detroit teenager in the 1860s, Thomas Edison decided to read through the entire public library for scientific information. “He began with the solid treatises of a dusty lower shelf and actually read . . . fifteen feet in a line,” an interviewer reported. Another contemporary noted that “many times Edison would get excused from duty under pretense of being too sick to work, . . . and invariably strike a beeline” for the public library, “where he would spend the entire day and evening reading . . . such works on electricity as were to be had.” In 1899 Wilbur and Orville Wright came upon an ornithology book in the Dayton Public Library “that rekindled their interest in human flight,” writes one of their biographers. Harry Truman said in later life, ““By the time I was twelve or fourteen I had read every book in the [Independence, MO, public] library, including the encyclopedias. . . . Those books had a great influence on me.”

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psychologists ban work with government interrogators

On August 7, the American Psychological Association (APA) voted to ban any collaboration between psychologists and national military and intelligence interrogators. The vote came in the wake of an independent report, released by the APA in July, that revealed that members of the association had colluded with government officials to remove the ethical and legal barriers preventing psychologists from participating in torture programs. The decision was passed almost unanimously at the association’s annual meeting, with one dissenting vote from Col. Larry James, who has led psychology operations for detainees at Guantanamo and Abu Ghraib.

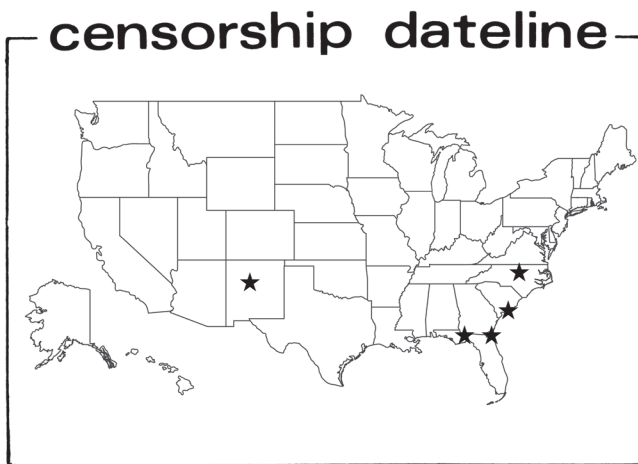
The so-called Hoffman report released in July primarily looked into the drafting of a 2005 APA publication called the Psychology Ethics in National Security (PENS) document. That document was a critical piece of the regulatory puzzle that allowed the government to claim its interrogation techniques were safe, legal, ethical, and effective. Before PENS, the APA’s ethical rules would have prevented psychologists from working with government interrogators. But the document’s language allowed for psychologists to vet interrogation techniques, establishing whether or not they were likely to cause the long-term mental health effects that would qualify a technique as psychological torture.

The ban instituted by the APA will keep psychologists from being involved in national security interrogations—no matter how severe—carried out by U.S. military and intelligence agencies or any other group outside of standard domestic criminal law enforcement. It will go into effect as soon as a new ethics code is drafted to reflect the decision.

The actions come in the wake of the APA’s release of a 542-page report produced by attorney David Hoffman, of the Sidley Austin law firm, detailing the relationship between various activities of the APA and Bush Administration policies on interrogation techniques. Hoffman was retained by the APA Board of Directors last November to conduct a thorough and independent review, and the APA cooperated fully during the eight-month process.

“The Hoffman report contains deeply disturbing findings that reveal previously unknown and troubling instances of collusion,” said Dr. Susan McDaniel, a member of the Independent Review’s Special Committee. “The process by which the Presidential Task Force on Psychological Ethics and National Security was created, the composition of the membership, the content of the PENS report and the subsequent activities related to the report were influenced by collusion between a small group of APA representatives and government officials.”

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libraries

Rio Rancho, New Mexico

Time Magazine called it one of the 100 best graphic novels, but some parents say *Palomar* is too graphic for a high school library shelf.

“The first thing I did was open the book and I saw a pornographic picture,” said parent Catreena Lopez, after her son checked the book out from Rio Rancho High School’s library earlier this year. The book shows cartoon characters having sex and even has scenes depicting child abuse.

“I was like, ‘No, that’s not going to happen in my house,’” Lopez said at the time. Lopez went to the school board demanding it be removed from the school library, but the book isn’t going anywhere. However, when school reopens, the Rio Rancho School District said kids will need a parent’s signature if they want to check the book out and are under the age of 18.

The district said parents should make the decision on what’s OK for their own children to read, and some parents agree. “There’s a lot of stuff that they are not supposed to be reading or looking at, and I think it’s good they are going to monitor that,” said parent Consuelo Saucedo. Reported in: koat.com, July 7.

schools

Duval County, Florida

A small coalition of parents in Florida are trying to ban two children’s books set in Afghanistan and Iraq from the curriculum, following similar pushes to have the books removed at other schools. Some parents and grandparents

of students in the Duval County Public Schools have protested the inclusion of the two books in the third-grade reading list.

Critics charge that the books—*Nasreen’s Secret School* and *The Librarian of Basra*—are inappropriate for students because they promote another religion besides Christianity and are too violent for young children. But neither book is about religion and educational groups have said the books are acceptable for that age group.

Dianne Haines Roberts, a grandparent in the Duval County district, called for parents to petition the books on the grounds that they “promote the Koran and praying to Muhammad.” Her post on Facebook about the books was shared 206 times.

Christine Jenkins, an associate professor at the University of Illinois who studies children’s literature and censorship was shocked to hear that these are the books parents want banned. She has read *The Librarian of Basra*, as well as *Nasreen’s Secret School*.

“They know very well that they can’t protect their children from any depiction of violence,” Jenkins said. “And this book is such a thoughtful perspective of wartime and what wartime does to a city and the various things you would think when you’re considering—what’s the impact of war?” Both books are based on true stories, and are written and illustrated by Jeanette Winter.

The Librarian of Basra is inspired by a 2003 *New York Times* story about Alia Muhammad Baker, who saved part of the Basra library’s collection before the building was burned in a fire after British forces entered the city. According to the *School Library Journal*, “the invading country is never mentioned” in Winter’s children’s book about the events.

Nasreen’s Secret School is about a young girl in Afghanistan whose grandmother sends her to a secret school for girls. Review journal *The Bulletin of the Center for Children’s Books* said that *Nasreen’s Secret School* makes the situation in Afghanistan “accessible.”

The Facebook post that prompted the petition drive asks: “If we cannot promote praying to God and Jesus Christ in our public schools, how can we promote reading the Koran and praying to Muhammad?” Other comments share concerns about violence and whether it is appropriate to discuss a wartime book when some of the students’ parents may have served in the conflicts.

Parents of children in schools in New York unsuccessfully tried to ban the books in 2013. In online reviews, some people have shared similar concerns as the parents in Florida, though the books have received overall positive reviews.

“As soon as it’s a political issue, in which there is any sort of disagreement, the book sort of symbolizes, or is perceived to supply, the particular stance on an issue,” said Jenkins.

Parents who oppose the books were directed to a petition tool on the school’s website to fight the curriculum,

which said the books will be discussed as part of lessons on writing, brainstorming and organization.

A district spokesperson said eight petitions had been filed and that they will be handled at the school level, where students will be given options for different books. It is typical for schools to provide alternatives for books parents' might find disagreeable, said Jenkins.

"If you want to take it out of the library, you want to take it out of the classroom, it's not 'my school,' it's 'our school' and there could very well be parents and children who are eager to read about contemporary issues," Jenkins said.

Duval County public school libraries has a banned books list of 10 literary works, including Roald Dahl's *Revolting Rhymes*, Tom Robbins' *Even Cowgirls Get the Blues* and Tony Kushner's *Angels in America*—which has also been removed from a textbook. Reported in: *The Guardian*, July 20.

Leon County, Florida

A principal's ad-hoc decision to pull a summer reading assignment after a handful of parents slammed the book's content and language is calling into question Leon County Schools' censorship bylaws.

The book—an award-winning and critically acclaimed 2003 British novel, *The Curious Incident of the Dog in the Night-Time*, by Mark Haddon—is narrated by a 15-year-old mathematical whiz with cognitive disabilities, similar to autism and Asperger's Syndrome, who relays what he sees and hears in an almost emotionless way, including when adults around him curse or doubt the existence of God.

Critics of the decision say that dropping the assignment without going through a committee review process violates district bylaws and sets a troubling precedent.

"This case is very startling. A handful of parents are making choices for every other parent in that school," said Sarah Hoffman, a National Coalition Against Censorship program manager. "There is a reason policies are in place—to protect educators and the decisions they make. This seems like a knee-jerk reaction," she added.

According to LCS bylaws, when someone has an issue regarding instructional materials, including library books, a complaint is to be filed formally. Administrators and principals determine the validity of the complaint, and if they find that the allegations are warranted, the material goes to a committee that evaluates its "pedagogical and educational merits as a whole," Hoffman said.

After receiving "concerns over the delivery of the text" through emails and telephone calls, Lincoln High School Principal Allen Burch said he wanted to "give the opportunity for the parents to parent" and canceled the assignment. Students who already did the work could receive extra credit.

While the move was made to accommodate offended parents, others are displeased with the decision. "I was

stunned," said Valerie Mindlin, whose children went to Lincoln. "I feel like it is second-guessing teachers. I never thought that the school would participate in an act of censorship. At what point do you let parents decide the curriculum for an entire school?" she asked.

In *Curious Incident*, the f-word is written 28 times, the s-word 18 times, and the c-word makes one appearance—in Britain that word is less charged than it is in the U.S. A few characters also express atheistic beliefs, taking God's name in vain on nine occasions.

The foul language and the religious skepticism alarmed Sue Gee, former teacher and a mother of an incoming Lincoln eleventh-grader, who emailed Burch on July 20. "I am not interested in having books banned," Gee said. "But to have that language and to take the name of Christ in vain—I don't go for that. As a Christian, and as a female, I was offended. Kids don't have to be reading that type of thing and that's why I was asking for an alternative assignment."

"I know it's not realistic to pretend bad words don't exist, but it is my responsibility as a parent to make sure that my daughter knows what is right or wrong," she added.

When asked about the dropped reading, Assistant Superintendent Scotty Crowe said the summer assignment was not part of the syllabus and can bypass review channels.

"We take censorship very seriously," Crowe said, after affirming that LCS officials were not a part of the decision. "But it wasn't a part of the true curriculum. We use summer reading as a way to keep kids engaged over the summer. The book will remain on the media center shelves and is not being banned."

Curious Incident was assigned to all Lincoln High School students during the summer break. Students were expected to complete projects, tiered by grade-level, based on the book. The novel was to be discussed during the school year, and the assignments were due after school began.

Burch was not the only one contacted by a concerned parent. In her email, Gee copied School Board member Alva Striplin, who is now recommending the removal of *Curious Incident* from the district's approved reading list.

"We are simply listening to parents' concerns," Striplin said. "We've got a million books to choose from and this one should not be on the district approval list." Reported in: *Tallahassee Democrat*, August 7.

Charleston, South Carolina

High school senior Regina Afton and her friends get wasted on the weekends, cut class, have sex in the storage room and snort Adderall through their noses. For Regina, life at the top of the Hallowell High School food chain is pretty good. Until she's sexually assaulted at a party. Then Regina's so-called friends disown her. She goes from "It Girl" to outcast in the course of a weekend—the object of her classmates' perpetual and increasingly savage scorn.

That's the premise of *Some Girls Are*, a popular young-adult novel and until late July, summer reading for some West Ashley High School students. Principal Lee Runyon pulled the book from the freshmen Honors English I summer reading list after a parent complained about the novel's dark and explicit content.

"In looking at the situation and circumstances and timing, we felt like we needed to try to accommodate the parent's concerns, which had some validity, and make a common-sense decision," Runyon said. "I think we could likely make a better choice."

Some Girls Are is author Courtney Summers' sophomore novel. The book has garnered a 4.4 star rating on Amazon.com and 3.89 stars on Goodreads out of more than 10,000 votes. Kirkus Review calls Summers' book "powerful and compelling." *Publishers Weekly* calls it "frightening and effective." "Fans of the film 'Mean Girls' will enjoy this tale of redemption and forgiveness," says *School Library Journal*.

Melanie MacDonald calls it "smut." Her daughter is an incoming ninth-grader at West Ashley. For Honors English I this summer, she had the option of reading either *Some Girls Are* or *Rikers High*, by Paul Volponi, a story about a teenage boy awaiting trial in a New York jail. Students are tested on their summer reading assignments at the beginning of the school year. These summer assignments, Runyon said, are intended to prepare students for more challenging works, like *Lord of the Flies* and "Romeo and Juliet."

MacDonald and her daughter both downloaded *Some Girls Are* on their Kindles in hopes of tackling the summer reading assignment together. The novel opens at a party where everyone but the protagonist, Regina, is heavily intoxicated. In the ensuing pages, peppered with F-bombs, one character sells a pocket of pills to another student. Another passes out after "six shots of Jack chased with one Heineken too many." At the end of the first chapter, Regina is nearly raped by her best friend's boyfriend.

MacDonald got to page 74—and a crude reference to oral sex—before she'd had enough. The next morning, she confiscated her daughter's e-reader and called the school.

"I'm not a prude for God's sake and I understand that these are issues kids are facing—the drugs, the alcohol, the bullying—but there has to be a way to present it that's not destructive to them," she said. "I get they're trying to find something the kids are interested in, but this book is trash."

She brought her concerns to Runyon, the school's English department chair, and the Charleston County School District Board of Trustees. In response, West Ashley posted a third book to the online Honors English I summer reading list last week, *A Tree Grows in Brooklyn*, along with an apology from the English department for the "inconvenience." But for MacDonald, that wasn't enough. She filed a complaint with the district to trigger a committee review of the text and its usefulness in the curriculum.

"This is my problem with the whole thing. They assigned this book and they either read it first or they didn't," she said. "Either way, they showed poor judgment."

Before the committee could meet, Runyon and the English department agreed to remove the book from the summer reading list. English teachers did read the book before choosing it, Runyon said, based on its "readability" and relevance to students. The book has been replaced by Laurie Halse Anderson's *Speak*, another novel about teenage trauma, bullying and rape.

"Typically with summer reading projects, one of the biggest challenges that students and teachers alike are faced with in the fall is a vast number of students who did not complete summer reading," he said. "Because they find the books less than entertaining and less than appetizing."

This wasn't the first time summer reading materials have been challenged in Charleston. Last year, Republican lawmakers threatened to cut funding from the College of Charleston's budget for assigning Alison Bechdel's illustrated memoir *Fun Home: A Family Tragicomic* with its frank depiction of homosexual sex.

MacDonald, meanwhile, has since finished the novel and still stands by her opinion: "It doesn't get any better," she said.

Since addressing the district's Board of Trustees and superintendent at the school board meeting, she's still waiting for an explanation from West Ashley High School and—an apology.

"If this is what they have for summer reading, what are they going to teach in the classroom? What are they going to expose her to when I'm not there?" she said. "You put your trust in these teachers, these educators and now I feel like a fool." Reported in: *The Post and Courier*, July 28.

university

Durham, North Carolina

Alison Bechdel's graphic novel *Fun Home: A Family Tragicomic* has won numerous accolades and its stage adaptation swept this summer's Tony Awards. The book is an autobiographical meditation on love, family and identity, and with its constant references to Greek mythology and literary greats from Shakespeare to James Joyce, it's not hard to see why it was Duke University's recommended summer reading for incoming freshmen. But some students are objecting to the novel's depictions of lesbian sexuality, arguing that the book is borderline pornographic and they shouldn't have been asked to read it.

Duke's not the first campus on which *Fun Home* has caused a stir, but a number of students have taken their concerns public—fueling ongoing debates about expectations of emotional comfort in higher education and whether the medium matters when it comes to controversial content.

“I objected because I think sexuality is becoming more and more commonplace in our culture, and that’s a risk,” said Brian Grasso, an incoming freshman who began a critical conversation about the book on a Facebook page for Duke’s class of 2019. “Universities like Duke which are very pro-sex risk isolating or even discriminating against people with conservative beliefs.”

He added, “It seems to me that in making this recommended summer reading Duke broke its own rules about diversity and about cultural sensitivity.”

Grasso, 18, identifies as a Christian and follows the Bible’s teachings on what he called sexual purity. He said he was alerted to *Fun Home*’s depiction of oral sex between two women by a friend, and reached out to the Facebook group to ask about others’ experiences with the book before reading it.

“I feel as if I would have to compromise my personal Christian moral beliefs to read it,” Grasso wrote.

Soon a handful of students made similar comments, and Grasso said he was privately messaged by some 20 students who shared his concerns or offered support.

Jeffrey Wubbenhorst, another incoming freshman who responded to Grasso’s post, said via email that he didn’t understand why Duke had asked him to read any graphic novel, and that he wasn’t planning to read *Fun Home* in particular.

“I am a Christian, and the nature of *Fun Home* means that content that I might have consented to read in print now violates my conscience due to its pornographic nature,” he said. Wubbenhorst said he wasn’t surprised that Duke had selected *Fun Home* for summer reading but said it constituted a “statement about tolerance and cultural sensitivity.” Namely, he said, that “cultural sensitivity is mandatory, unless we don’t want to respect your cultural background or religion.”

Similar criticisms have been levied at other colleges and universities that have taught *Fun Home*, including the College of Charleston—where state lawmakers threatened to defund the summer reading program for featuring it—and the University of Utah. Both institutions stood by the book, which tells the story of a lesbian woman coming to terms with her own sexuality as she over time discovers that her distant father is also gay. *Fun Home* features black-and-white drawings of the protagonist in bed with and performing oral sex on a partner. Much more broadly, it features scenes of a family breaking apart under the strain of lies and closeted identities and then struggling to reconnect, or at least better understand each other, on new ground.

Crafton Hills College in California briefly said it was going to include trigger warnings in its course on graphic novels featuring *Fun Home* and Marjane Satrapi’s critically acclaimed *Persepolis*, about the Iranian revolution, but later backed down amid accusations of censorship (see

page 161). This was prompted by a student and her parents complaining.

Duke’s summer reading program is recommended, not required, and designed to give incoming students a shared intellectual experience. The book is selected each year by a committee of students, faculty and staff. Bechdel, like other authors whose works have been selected in previous years, spoke to students during orientation earlier this summer.

Michael Schoenfeld, a Duke spokesman, said, “*Fun Home* was ultimately chosen because it is a unique and moving book that transcends genres and explores issues that students are likely to confront.” It’s also “one of the most celebrated graphic novels of its generation, and the theatrical adaption won the Tony Award for Best Musical, and four others, in 2015.”

Schoenfeld reiterated via email that the reading program was voluntary and said that with a class of 1,750 students, “It would be impossible to find a single book that did not challenge someone’s way of thinking. We understand and respect that, but also hope that students will begin their time at Duke with open minds and a willingness to explore new ideas, whether they agree with them or not.”

Grasso said he wasn’t opposed to challenging ideas or uncomfortable conversations, noting that he’d already discussed the book with a gender-fluid friend who disagreed with him. But he said it was unrealistic to expect him to abandon strong beliefs against pornography overnight, or even within four years at Duke. Although he said he believes homosexuality is “morally wrong,” he said he’d be equally against being asked to read a book with graphic depictions of a heterosexual couple—especially without an explicit warning about the content.

“I think there’s a fundamental difference” between being asked to read about sex and being asked to look at it, he said. “And I think there would be an even bigger difference between a picture and a video. It becomes harder to intellectualize.”

The Foundation for Individual Rights in Education (FIRE) advocated against trigger warnings for graphic novels in the Crafton Hills case. Perhaps because teaching graphic novels in the college classroom is still a relatively new phenomenon, Greg Lukianoff, executive director of FIRE, said he hadn’t seen many other free speech cases involving them. He rejected the argument that graphic novels might be more deserving of trigger warnings or other kinds of censorship than traditional books, however, and said that controversies such as the one at Duke are part of a larger, growing problem of students expecting to be emotionally comfortable at college.

“My overall take is that most people have a desire for freedom from speech [they find objectionable] and that higher education’s goal should be to try to get them out of that way of thinking,” said Lukianoff. “If we did a better job of educating people in K-12 to seek out material that they

didn't agree with or that might not work with their worldview, this might not happen."

FIRE also vigorously defends people's right to free speech. But Lukianoff said no one at Duke was asking the students to accept only the worldview presented in *Fun Home*—only to read it, not even for a grade.

Grasso said that recommended reading nevertheless meant encouraged, and that created pressure to conform. He said he'd eventually read the book, after a friend sent him page numbers of sexual scenes so he could avoid them.

Charles Baraw, an assistant professor of English at Southern Connecticut State University who teaches courses on graphic novels, said trigger warnings or not, most of the students involved in the Duke debate seemed to have received some notice about *Fun Home's* content.

"Everyone seems to know what is inside the book even when they putatively refuse to look at it," he said, adding that he'd oppose the imposition of a formal warning system in part "because it implies that viewing a drawing of two naked women on a bed together (reading a book!) may inflict a kind of trauma on the reader. . . . I'm not comfortable with that."

That said, Baraw added, "When I teach *Fun Home* and other challenging graphic narratives, I do discuss the power of the medium to evoke very strong emotional responses, and I ask students to first take note of their gut responses, second, step back and analyze what they felt, thought and experienced when reading these works."

Like Grasso, Baraw said that images do affect the reader differently than does the written word. But Baraw said that's the point and power of graphic novels. "When handled as well as Alison Bechdel does in *Fun Home* (or Art Spiegelman does in *Maus* [about the Holocaust]) the rhetoric of comics often does disturb, challenge and provoke us. For me, this is as true of the violence in *The Dark Knight Returns* and *Incognegro* (which graphically depicts two lynchings) as it is in *Fun Home* or Charles Burns's *Black Hole*," Baraw said. "This is one of the most important reasons to read and teach graphic narratives: they don't just disturb or offend our sensibilities and beliefs, they get us talking and thinking, and maybe, acting differently than we did before we read them."

Hillary Chute, an associate professor of English at the University of Chicago, said all of the female graphic narrative authors she wrote about in her book, *Graphic Women: Life Narrative and Contemporary Comics*—including Bechdel—have faced censorship issues in their careers. And more controversy is sure to come, she said, given the rising popularity of these works and the fact that people react "very, very differently to seeing images of sex" versus merely reading about it.

"People tend to react to images much, much more quickly than they do to prose—because they can feel so immediate, and so quickly produce so much affect," Chute said.

Powerful feelings aside, she strongly disagreed with the idea that *Fun Home* was pornographic. "When an author draws something explicit—even when the context is the farthest thing from pornography—the reaction is often to label the work pornographic, simply because of the radical act of picturing something," Chute said. But not all images of sex, however explicit, are pornographic.

"Bechdel's autobiographical images of her first relationship are not meant to titillate, but to describe, as everywhere else in the book, what her experience of realizing she was a lesbian was like," Chute said. "In terms of *Fun Home* striking a nerve, anyone who has actually read the book will know how far from pornography it is." Reported in: insidehighered.com, August 25.

foreign

Venice, Italy

The new mayor of Venice, Luigi Brugnaro, has officially banned from schools dozens of children's books on subjects such as homosexuality and disability, provoking a flurry of criticism. The controversial move to ban the titles was one of Brugnaro's promises during his campaign leading up to the June elections.

According to a statement on the mayor's website, Brugnaro said he would not be "intimidated," and listed 49 books as blacklisted for schools. The banned titles include the French book *Jean Has Two Moms*, which centers around a wolf family with two mothers. The mayor said that it is "parents that need to educate their children on these things, and not schools."

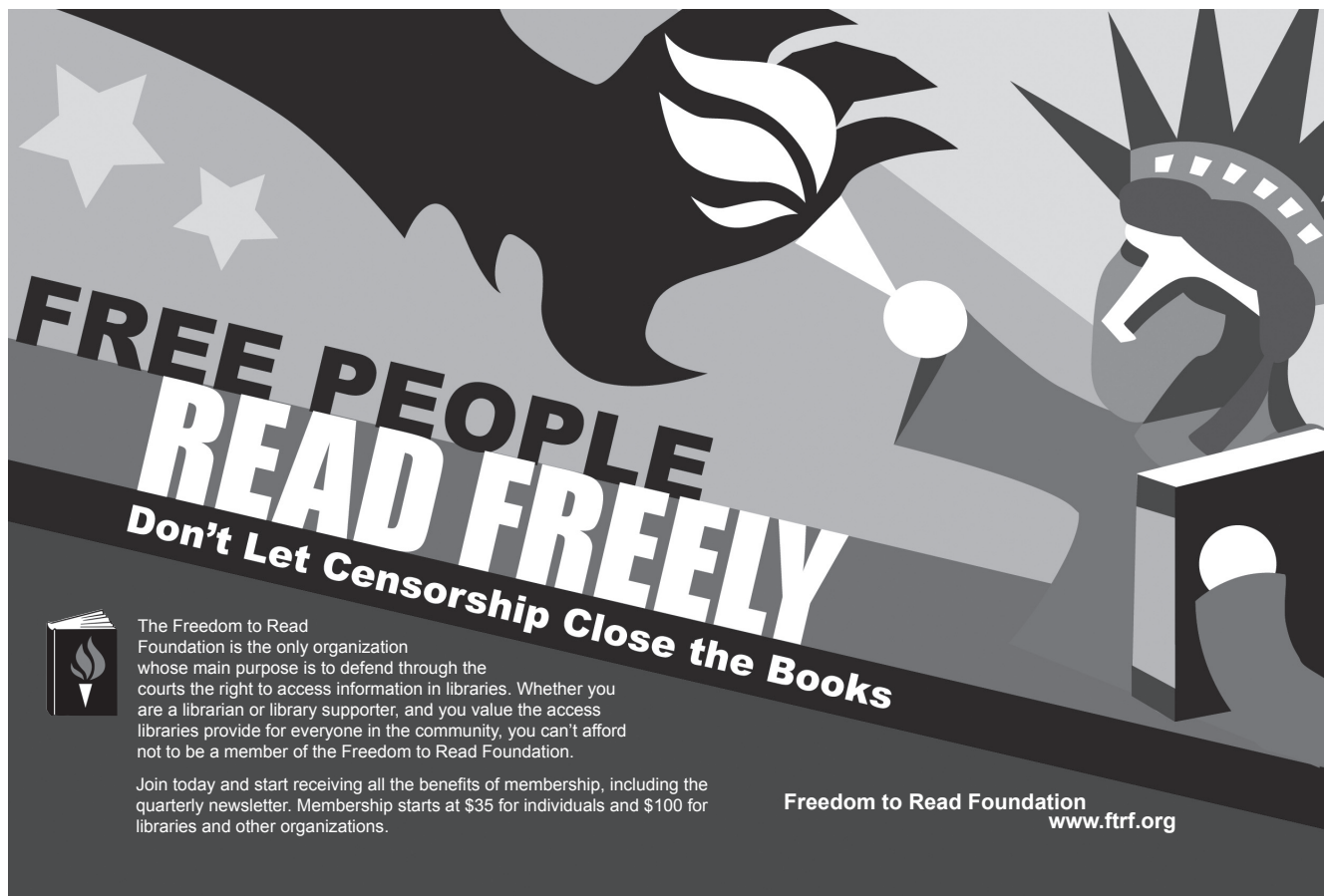
"We do not want to discriminate against children," he said. "At home parents can be called Dad One and Dad Two, but I have to think about the majority of families where there is a mother and a father."

Reacting to the announcement, organizations launched a marathon of public readings of the banned books. Association of Italian Publishers president Marco Polillo said that pulling books from a school is "always unacceptable." Several libraries also encouraged people to read the banned titles with signs reading "Blacklisted books, be a rebel, read them."


In another act of solidarity, more than 250 Italian authors have written to the mayor asking him to remove their books from the city. One signatory, the award-winning author Giorgio Fontana, said he signed the letter to "prove both that the writers who've seen their books removed are not alone," and to "protest against an appalling gesture of censorship and ignorance."

"To order that some books must be removed from schools is disturbing, and the alleged motivation makes it all even worse: the idea that these books promote a 'gender theory' which would harm the only idea of family that

Brugnaro has in mind: an heterosexual married couple with children. It's all so depressing," said the writer. "Hopefully our letter will be effective—but even if it isn't, we have showed at least that we strongly disapprove Brugnaro's choice. We'll see what happens next." Reported in: Agence France Presse, July 9; *The Guardian*, July 16. □



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from the bench



U.S. Supreme Court

According to Adam Liptak, who covers the Supreme Court for *The New York Times*, “It is not too early to identify the sleeper case of the last Supreme Court term. In an otherwise minor decision about a municipal sign ordinance, the court in June transformed the First Amendment.”

Robert Post, the dean of Yale Law School and an authority on free speech, said the decision was so bold and so sweeping that the Supreme Court could not have thought through its consequences. The decision’s logic, he said, endangered all sorts of laws, including ones that regulate misleading advertising and professional malpractice.

“Effectively,” Post said, “this would roll consumer protection back to the 19th century.”

Floyd Abrams, the prominent constitutional lawyer, called the decision a blockbuster and welcomed its expansion of First Amendment rights. The ruling, he said, “provides significantly enhanced protection for free speech while requiring a second look at the constitutionality of aspects of federal and state securities laws, the federal Communications Act and many others.”

“Whether viewed with disbelief, alarm or triumph,” Liptak continued, “there is little question that the decision, *Reed v. Town of Gilbert*, marks an important shift toward treating countless laws that regulate speech with exceptional skepticism.”

“The ordinance in the *Reed* case discriminated against signs announcing church services in favor of ones promoting political candidates,” Liptak continued. “That distinction was so offensive and so silly that all nine justices agreed that it violated the First Amendment. It would have

been easy to strike down the ordinance under existing First Amendment principles. In a concurrence, Justice Elena Kagan said the ordinance failed even ‘the laugh test.’”

But Justice Clarence Thomas, writing for six justices, used the occasion to announce that lots of laws are now subject to the most searching form of First Amendment review, called strict scrutiny. Strict scrutiny requires the government to prove that the challenged law is “narrowly tailored to serve compelling state interests.” You can stare at those words as long as you like, but here is what you need to know: Strict scrutiny is generally fatal.

“When a court applies strict scrutiny in determining whether a law is consistent with the First Amendment,” said Abrams, “only the rarest statute survives the examination.”

Laws based on the content of speech, the Supreme Court has long held, must face such scrutiny. The key move in Justice Thomas’s opinion was the vast expansion of what counts as content-based. The court used to say laws were content-based if they were adopted to suppress speech with which the government disagreed. Justice Thomas took a different approach. Any law that singles out a topic for regulation, he said, discriminates based on content and is therefore presumptively unconstitutional.

Securities regulation is a topic. Drug labeling is a topic. Consumer protection is a topic.

A recent case illustrates the distinction between the old understanding of content neutrality and the new one. Last year, the federal appeals court in Chicago upheld an ordinance barring panhandling in parts of Springfield, Illinois. The ordinance was not content-based, Judge Frank H. Easterbrook wrote, because it was not concerned with the ideas panhandling conveys. “Springfield,” Judge Easterbrook wrote, “has not meddled with the marketplace of ideas.”

This summer, after the *Reed* decision, the appeals court reversed course and struck down the ordinance. “The majority opinion in *Reed* effectively abolishes any distinction between content regulation and subject-matter regulation,” Judge Easterbrook wrote. “Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.”

That same week, the federal appeals court in Richmond, Virginia, agreed that *Reed* had revised the meaning of content neutrality. “*Reed* has made clear,” the court said, that “the government’s justification or purpose in enacting the law is irrelevant” if it singles out topics for regulation. The court struck down a South Carolina law that barred robo-calls on political and commercial topics but not on others.

In August, a federal judge in New Hampshire relied on *Reed* to strike down a law that made it illegal to take a picture of a completed election ballot and show it to others. “As in *Reed*,” Judge Paul Barbadoro wrote, “the law under review is content-based on its face because it restricts speech on the basis of its subject matter.”

In a concurrence in the *Reed* decision, Justice Stephen G. Breyer suggested that many other laws could be at risk

under the majority's reasoning, including ones concerning exceptions to the confidentiality of medical forms, disclosures on tax returns and signs at petting zoos.

Professor Post said the majority opinion, read literally, would so destabilize First Amendment law that courts might have to start looking for alternative approaches. Perhaps courts will rethink what counts as speech, he said, or perhaps they will water down the potency of strict scrutiny.

"One or the other will have to give," he said, "or else the scope of Reed's application would have to be limited."

In her concurrence, Justice Kagan scratched her head about how a little dispute about church signs could have gotten so big. "I see no reason," she wrote, "why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us." Reported in: *New York Times*, August 17.

The Supreme Court is designated as the ultimate protector of constitutional rights, but the guarantee of protest and free speech ends on the steps to the plaza in front of the court's grand marble temple, a unanimous federal appeals court panel ruled August 28.

Demonstrators are allowed on the sidewalk in front of the court but not any closer to the famous portico promising "Equal Justice Under Law," three judges of the U.S. Court of Appeals for the District of Columbia Circuit decided.

The appeals court judges upheld a 1949 law that forbids demonstrations on the grounds of the high court, on the premise that protests at the court's doorstep might lead to the perception that the justices are swayed by vox populi rather than the dictates of the law.

"Allowing demonstrations directed at the Court, on the Court's own front terrace, would tend to yield the opposite impression: that of a Court engaged with—and potentially vulnerable to—outside entreaties by the public," wrote U.S. Circuit Judge Sri Srinivasan, who argued often before the court as a lawyer and is sometimes mentioned as a future Supreme Court justice.

On days when controversial cases are argued and decided, the 50-foot-wide sidewalks surrounding the court are filled with chanting, flag-waving, bullhorn-toting protesters of all stripes. The Supreme Court itself, in 1983, ruled that these sidewalks—on First Street NE, just across from the Capitol—are open for protests.

But demonstrators are not allowed any closer. The court in its 1983 decision did not address the protest restrictions on the court's grounds, which include the 252-by-98-foot oval marble plaza, with its fountains, benches, flagpoles and steps leading to the court's iconic, six-ton bronze doors.

Critics have found the no-speech zone around the Supreme Court ironic if not hypocritical. The current court considers itself a fierce protector of political speech, knocking down restrictions on corporate spending on elections, for instance. The justices also struck a Massachusetts law that limited speech around abortion clinics.

In 2010, because of security concerns, the court said the public was no longer allowed to enter through the massive front doors. Visitors must go through security checkpoints on the ground floor, although they may exit via the court's front porch.

The 1949 federal statute makes it unlawful to "parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display in the Building and grounds a flag, banner, or device designed or adapted to bring into public notice a party, organization, or movement."

In 2013, U.S. District Judge Beryl Howell struck down the restrictions. "It cannot possibly be consistent with the First Amendment for the government to so broadly prohibit expression in virtually any form in front of a courthouse, even the Supreme Court," Howell wrote in a 68-page opinion.

Within days, the Supreme Court instituted its own rules that essentially kept the restrictions in place, and the legal fight has continued.

Howell was considering a challenge brought by Harold Hodge of southern Maryland, who was arrested in January 2011 for standing on the plaza wearing a 3-by-2-foot sign that said, "The U.S. Gov. Allows Police to Illegally Murder and Brutalize African Americans and Hispanic People."

Hodge was represented by the Rutherford Institute, a nonprofit civil liberties group that denounced the latest ruling. "If citizens cannot stand out in the open and voice their disapproval of their government, its representatives and its policies without fearing prosecution, then the First Amendment is little more than window-dressing on a store window—pretty to look at but serving little real purpose," said the institute's president, John W. Whitehead. "Through a series of carefully crafted legislative steps and politically expedient court rulings, government officials have managed to disembowel this fundamental freedom."

But Srinivasan said the court is different from Congress, where people have a right to protest for political action. The plaza is designed as an extension of the court, he said, and restrictions on protests there need only be reasonable and viewpoint-neutral.

There is no suggestion that the law is discriminatory, he said: "Demonstrations supporting the court's decisions and demonstrations opposing them are equally forbidden in the plaza."

Srinivasan added: "Unless demonstrations are to be freely allowed inside the Supreme Court building itself, a line must be drawn somewhere along the route from the street to the Court's front entrance. . . . Among the options, it is fully reasonable for that line to be fixed at the point one leaves the concrete public sidewalk and enters the marble steps to the Court's plaza."

Srinivasan was joined by Circuit Judge Karen LeCraft Henderson and Senior Circuit Judge Stephen F. Williams.

The plaza is likely to remain a place for only tourists wielding cameras and journalists interviewing lawyers and their clients after oral arguments and decisions (cameras, of course, are not allowed in the court).

Whitehead noted in his statement that the decision could be appealed and that his organization is also challenging the restrictions that the Supreme Court implemented after Howell's ruling. But there was little expectation of success.

"Ironically, it will be the justices of the U.S. Supreme Court who will eventually be asked to decide the constitutionality of their own statute in this case, yet they have already made their views on the subject quite clear," Whitehead said. Reported in: *Washington Post*, August 28.

schools

Tucson, Arizona

On July 7, 2015, the U.S. Court of Appeals for the Ninth Circuit issued its opinion in *Arce v. Douglas* (formerly *Arce v. Huppenthal*), a lawsuit filed by students in the Tucson Unified School District (TUSD). The lawsuit challenges the constitutionality of Arizona Revised Statute § 15-112, which prohibits the use of class materials or books that encourage the overthrow of the government, "promote resentment toward a race or class of people," are "designed primarily for pupils of a particular ethnic group" and "advocate ethnic solidarity instead of the treatment of pupils as individuals."

The Freedom to Read Foundation (FTRF) prepared an *amicus curiae* brief in support of the student plaintiffs, arguing that the statute, which led to the disbanding of Tucson's Mexican American Studies (MAS) program, violates Arizona students' First Amendment rights to receive information and is unconstitutionally overbroad.

FTRF was joined in its *amicus* brief by the American Library Association, American Booksellers Association for Free Expression, Asian/Pacific American Librarians Association, Black Caucus of the American Library Association, Comic Book Legal Defense Fund, National Association for Ethnic Studies, National Coalition Against Censorship, National Council of Teachers of English and REFORMA: The National Association to Promote Library & Information Services to Latinos and the Spanish Speaking.

Legal counsel for the student plaintiffs issued the following statement on the opinion, which remanded the case back to the trial court for further consideration:

"In an important decision to advance equality and freedom of speech, the Ninth Circuit reversed the district court and held that a challenge to the Arizona law prohibiting Mexican-American studies courses raises claims that should go to trial.

"In *Arce v. Douglas*, high school students challenged an Arizona law that dismantled the highly successful Mexican

American Studies (MAS) program in the Tucson Unified School District. They argued that it was unconstitutionally vague and overbroad, discriminated based on viewpoint, and was enacted and enforced in discriminatory manner.

"The district court in 2013 agreed that one of the provisions, which could outlaw any ethnic studies course, violated the First Amendment, but it granted summary judgment against the students on their other claims.

"Importantly, the Ninth Circuit panel agreed that students have a First Amendment right to receive information and ideas and the provision that would outlaw virtually any ethnic studies course violated this First Amendment right.

"Though the panel agreed with the district court that the other provisions were not vague or overbroad, it reversed the grant of summary judgment against the students on their discrimination claims. The court found that there was substantial evidence that the law was adopted out of a racially discriminatory animus and directed that the students' equal protection discrimination claims be set for trial. Erwin Chemerinsky, dean of University of California Irvine School of Law, who argued on behalf of the students, notes, 'The panel's opinion is a key step on the path to having this very objectionable, discriminatory law struck down as violating equal protection and freedom of speech.'

"Robert Chang, executive director of the Korematsu Center, who led the students' legal team on appeal, commented, 'We are pleased that the Ninth Circuit upheld a key finding of the district court, and we are excited for the opportunity to tell the plaintiffs' story in court, that the students and the Mexican American community might yet find vindication.'"

"We are very happy that the students will finally have the opportunity for a full and fair hearing on their equal protection and First Amendment claims," said Barbara Jones, executive director of the Freedom to Read Foundation. "FTRF remains steadfast in its support of the students' right to receive information free from discrimination and looks forward to providing continuing support and assistance to the plaintiffs as they seek to vindicate their rights."

The law was specifically aimed at eliminating the Tucson program, but ironically it may have accelerated greatly the spread of similar programs elsewhere. As *The Atlantic* reported recently, "Mexican American studies has spread to high schools at a rate that no one could have imagined before Arizona banned the class in 2010." Had the Arizona law never been enacted, "California and Texas public schools would not be considering to offer the course in all its high schools." Reported in: ala.org, July 13; *The Atlantic*, July 19.

Rogers, Minnesota

A federal judge has ruled that a student who was suspended from his high school for a two-word tweet can

proceed with his lawsuit against the school district and the town police.

Reid Sagehorn was suspended from Rogers High School in February 2014 and threatened with expulsion after he sarcastically tweeted “Actually, yeah” in response to an anonymous post on a website called “Roger confessions” that said Sagehorn had “made out” with a female teacher.

In a 45-page ruling issued August 11, U.S. District Judge John Tunheim wrote that Sagehorn had a plausible argument that the Minnesota school district violated his First and Fourteenth Amendment rights and that he might have been defamed in public remarks by the town police chief, who was quoted in news stories as saying that Sagehorn could face felony charges.

“The order said what we thought it was going to say,” said Paul Dworak, who is one of Sagehorn’s attorneys. It showed that school officials cannot censor student speech anytime, anywhere, he said—particularly when the student is, like Sagehorn was, “home on a Sunday.”

Tunheim did dismiss Sagehorn’s claims that the police department violated his First and Fourteenth Amendment rights, and dismissed Stephen Sarazin, the public liaison police officer at the school, from the case. Police Chief Jeffrey Beahen, Superintendent Mark Bezek and Principal Roman Pierskalla are still defendants in the case.

Sagehorn was suspended for “threatening, intimidating, or assault of a teacher, administrator or other staff member.” Sagehorn was then told that he would be expelled if he did not withdraw from the district, according to the ruling. He ultimately withdrew and has since graduated from another high school. After an investigation, administrators found no evidence of an inappropriate relationship between Sagehorn and the teacher.

In June 2014, Sagehorn filed a lawsuit, arguing that the tweet was protected speech, since it was posted outside of school hours, off school grounds, not at a school-sponsored event and without using school property.

In his ruling, Tunheim wrote that the school district has not shown that the tweet “caused a substantial disruption, was obscene, was lewd or vulgar, or was harassing.” Tunheim wrote that “the general rule is that off-campus statements are ‘protected under the First Amendment and not punishable by school authorities unless they are true threats or are reasonably calculated to reach the school environment and are so egregious as to pose a serious safety risk or other substantial disruption in that environment.’”

Dworak said there is now an “extremely high bar” for the school district to prove that the tweet caused a substantial disruption in school.

Tunheim’s ruling suggests off-campus speech is protected unless there is an intent to cause a disruption, said Frank LoMonte, executive director of the Student Press Law Center. Sagehorn has claimed in his lawsuit that he did not intend for anyone to believe the rumor, and that no

one had mentioned his tweet at school until the principal brought it up a week after he posted it.

“It clearly didn’t cause a disruption other than the school’s overreaction,” LoMonte said. “The sum total of the disruption seems to be that the school took this way too seriously.”

The school district has maintained that they were entitled to regulate Sagehorn’s speech because “it was lewd and constituted harassment to the teacher identified in the post.” The 1986 U.S. Supreme Court case *Bethel School District vs. Fraser* allows schools to discipline on-campus speech that is vulgar, lewd or plainly offensive.

Tunheim wrote that *Fraser* does offer school officials significant discretion to define “vulgar” speech that is delivered on school grounds, but he said the case is “clearly limited to on-campus speech.”

This is one of the most important parts of the ruling, LoMonte said. Schools often try to use *Fraser* to regulate vulgar off-campus speech, but this is a “categorical rejection” of that argument, he said.

The school district has claimed that “several dictionaries” define “make out” as engaging in sexual intercourse. Tunheim wrote that the question before the court is instead about how an average person “would understand the term in the context in which it appeared.” The term “make out” is slang, he wrote, and its meaning is ambiguous.

Now, the case could continue to trial. Sagehorn is seeking monetary awards, an expungement of the incident from his transcript and student files and for policy and procedure changes at Rogers High School and the school district.

The defendants could also choose to settle, if they take the ruling as a sign that they might lose the case. “It makes no sense for the schools to dig in and fight this for multiple years when the handwriting seems to be on the wall,” LoMonte said. Reported in: splc.org, August 13.

Itawamba, Mississippi

The U.S. Court of Appeals for the Fifth Circuit has ruled en *banc* in favor of a Mississippi school district in a First Amendment case where a former high school student was punished for posting online a profanity-filled rap about two school coaches.

Taylor Bell was suspended from Itawamba Agricultural High School in January 2011 after he posted a homemade rap video to Facebook and Youtube. The song, which was posted outside of school grounds, came after female students complained that two male coaches at the school had made sexual comments about their bodies. Administrators said the rap song threatened the coaches—and according to the ruling, one of the coaches said he was scared for his safety.

“Looking down girls shirts / drool running down your mouth / you fucking with the wrong one / going to get a pistol down your mouth / Boww,” Bell wrote in his song.

The Fifth Circuit opinion, which was issued August 20, affirms the district court's ruling that the school administrators reasonably understood the speech to be threatening, harassing and intimidating the teachers, and that the song caused a "substantial disruption" at school.

With this decision, the appeals court overturned the previous ruling of its panel from December, in which two out of three judges voted in favor of Bell, saying that the song did not cause a substantial disruption and because the song was recorded off campus, the *Tinker* test did not apply. The court decided in February for all fifteen Fifth Circuit judges to rehear the case. In this ruling, four justices dissented from the majority, at least in part.

In the 1988 landmark ruling of *Tinker v. Des Moines Independent Community School*, the U.S. Supreme Court ruled that school officials may not censor student speech unless it causes a substantial or material disruption to the educational operation of the school. Since then, courts have been divided about whether *Tinker* covers off-campus speech. The Supreme Court has not yet addressed the issue.

Scott Colom, Bell's lead attorney, previously said that Bell would consider going to the Supreme Court if the Fifth Circuit overturned his appeal and that "this issue is ripe for Supreme Court review."

Michele Floyd, attorney for the Itawamba School District, said she was excited about the ruling and the "implications that it has for the school districts in our circuit."

"I was very pleased with the majority opinion's very favorable attitude toward education and the hurdles educators have in disciplining students and maintaining control in classrooms, and how hard that is these days," she said.

The majority opinion, which was authored by Judge Rhesa Hawkins Barksdale, stated that the factors for forecasting a substantial disruption must be "considered against the backdrop of the mission of schools: to educate." Threatening a teacher, the opinion continued, "impedes, if not destroys, the discipline necessary for an environment in which education can take place."

"If there is to be education, such conduct cannot be permitted," Barksdale wrote. "In that regard, the real tragedy in this instance is that a high-school student thought he could, with impunity, direct speech at the school community which threatens, harasses, and intimidates teachers, and as a result, objected to being disciplined."

The opinion also cited "the recent rise in incidents of violence against school communities" as a reason for school administrators to take seriously—and react quickly to—any statements by students that could be threats of violence. Because of this, Barksdale wrote, "it is necessary to establish the extent to which off campus student speech may be restricted without offending the First Amendment."

Frank LoMonte, executive director of the Student Press Law Center, which filed an *amicus* brief in the case in June 2012 on behalf of Bell, said the whole opinion was built on

a "hallucination that schools are more dangerous than ever before when every statistic proves otherwise."

It's a faulty stereotype, he said. Research has found that rates of school violence have decreased significantly since the early 1990s, but high-profile incidents of school shootings have heightened a sense of national concern for the safety of students.

The Fifth Circuit court held that *Tinker* can apply to off-campus speech—writing that this was first established as a precedent by the Circuit in 1972 in *Shanley v. Northeast Independent School District*. Barksdale wrote that in Bell's case, the *Tinker* standard did apply because his song could be reasonably forecast to cause a disruption: Bell wanted the song to be public and to reach the school community, it pertained directly to events at school, identified the coaches by name—one of whom thought it threatened his safety—and neutral third parties found it to be threatening.

"To me, the single most alarming thing [in the opinion] is that all speech is now *Tinker* speech," LoMonte said.

In the four written dissents, most judges said *Tinker* should not apply to off-campus speech, or at least it should be a modified standard.

"Our Circuit should hesitate before carving out a new category of unprotected speech," Judge Edward C. Prado wrote in a dissent, adding that these issues need to be addressed by the Supreme Court.

In Judge James L. Dennis' dissent, he wrote that the majority opinion could lead to the silencing of student speakers if school officials disagree with the "content and form" of their speech—particularly off-campus speech that criticizes school employees. He wrote that this violates the *Tinker* principle that students are not "confined to expression of those sentiments that are officially approved."

"Freedom of speech exists exactly to protect those who would criticize, passionately and vociferously, the actions of persons in power," Dennis wrote. "But that freedom is denied to Bell by the majority opinion because the persons whose conduct he dared to criticize were school teachers." Reported in: splc.org, August 20.

publishing

Phoenix, Arizona

A federal court on July 10 permanently ordered Arizona state prosecutors to halt enforcement of a 2014 law restricting the display of nude images.

The order approved a joint final settlement between the Arizona attorney general and the coalition of Arizona booksellers, book and newspaper publishers, librarians, and photographers, who filed a federal lawsuit challenging the law. The order resolves all claims in the lawsuit, *Antigone Books v. Brnovich*, and states that plaintiffs are entitled to attorney's fees.

“This is a complete victory for publishers, booksellers, librarians, photographers, and others against an unconstitutional law,” said Media Coalition Executive Director David Horowitz, whose members include plaintiffs in the suit. “Now they won’t have to worry about being charged with a felony for offering newsworthy and artistic images.”

The law, Arizona Revised Statute 13-1425, was initially passed with the stated intent of combating “revenge porn,” a term popularly understood to describe a person’s malicious posting of an identifiable, private image online with the intent and effect of harming an ex-lover. But, as plaintiffs maintained in the lawsuit, the law wasn’t limited to revenge and criminalized far more than offensive acts. It could have led to the conviction of someone posting a nude photo with no intent to harm the person depicted. This would include, for example, an artistic photographer who creates an anthology of his images of nudes—as well as the book’s publisher, seller, or librarian.

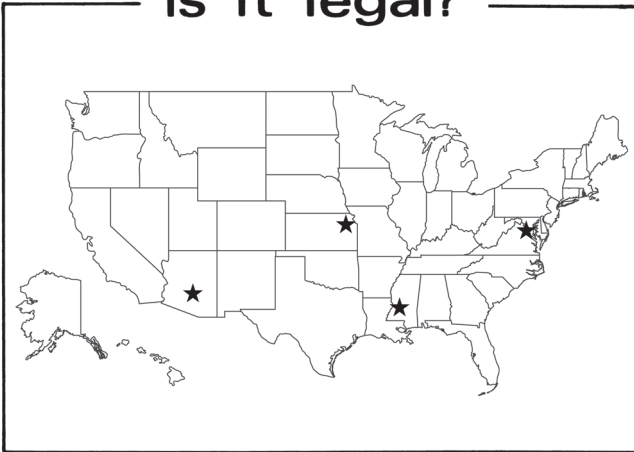
Likewise, a person who shared a photograph could have been charged with a felony even if the person

depicted had no expectation that the image would be kept private and suffered no harm, such as a photojournalist who posted images of victims of war or natural disaster. As a result, the law applied to any person displaying an image of nudity, no matter how newsworthy, artistic, educational, or historic.

“This is an important vindication of the First Amendment and a great resolution for our clients,” said ACLU Staff Attorney Lee Rowland, who, along with lawyers from the ACLU of Arizona and Dentons US LLP, represented the plaintiffs. “We commend the state for agreeing not to enforce a broad statute that chilled and criminalized speech unquestionably protected by the Constitution.”

Dan Pochoda, attorney for the ACLU of Arizona, added: “We always believed that it would be a waste of the Arizona taxpayers’ money to continue defending this unconstitutional statute. We’re pleased that the court’s order means this law will not be enforced, all without additional and unnecessary litigation.” Reported in: aclu.org, July 10. □

is it legal?



schools

Gilbert, Arizona

An Arizona school district made students place stickers, which promote childbirth and adoption over abortion, inside their high school biology textbook.

New York Times bestselling author Suzanne Young, who lives in the district, said she was stunned when her 14-year-old son showed her one of the stickers on his textbook. “I read it, and just looked at him. Is this a joke?”

Her son, a freshman at Gilbert High School, told her that if students didn’t put the abstinence-only education sticker in their textbooks, the student would have to speak with their grade-level administrator. “They’re teaching morality on an educational textbook,” Young, a former high school teacher, said.

The sticker began: “The Gilbert Public School District supports the state of Arizona’s strong interest in promoting childbirth and adoption over elective abortion.”

This language was taken almost verbatim from an Arizona law that states that schools can only provide support (financial or instruction) to a sexual education program that presents giving birth and adoption as preferred to abortion.

The sticker continued: “The District is also in support of promoting abstinence as the most effective way to eliminate the potential for unwanted pregnancy and sexually transmitted diseases. If you have questions concerning sexual intercourse, contraceptives, pregnancy, adoption, or abortion, we encourage you to speak with your parents.”

Young said the sticker assumes there are parents with the necessary medical education to talk to their children about these topics.

“Even if I ignore all the rest of it, it assumes these kids have supportive parents to talk to. Or their parents are even knowledgeable,” Young said. “Since when is withholding education a good thing for teens?”

“Not all parents are going to have knowledge of different STDs and different methods of prevention,” she said. “They can talk about the morality of it but the facts should still come from schools.”

The other law referenced on the sticker states Arizona schools may provide medically accurate and age-appropriate instruction on AIDS and HIV. The instruction must also promote abstinence, cannot promote “a homosexual life-style” and cannot “portray homosexuality as a positive alternative life-style.”

The stickers are apparently a response to a debate in the district last year. The Gilbert Public Schools board wanted to edit the chapter on human reproduction to exclude abortion, according to local reports. But the board nixed this idea because of copyright concerns.

Gilbert Public Schools Superintendent Christina M. Kishimoto said in a statement: “I worked closely with the Governing Board to provide a solution to last year’s matter regarding the District’s biology books. The board and I have full confidence in our teachers and because we trust the way our teachers instruct, we agreed that the stickers on the back cover are the best course of action. We are pleased with the collaboration and completion of this matter.”

Young said her family was new to the district and they “love the schools,” but she doesn’t blame the teachers for what happened.

“They were just doing what they had to,” Young said. “But I can’t believe more people weren’t there to stand up to this.” Reported in: talkingpointsmemo.com, August 21.

universities

Topeka, Kansas

Does a university have the authority to limit the off-campus speech of its students? That was the question posed in the Kansas Court of Appeals July 14 as Kansas State and the University of Kansas took opposing views in the case of *Navid Yeasin v. The University of Kansas*.

In June 2013, Yeasin, a KU student, was charged with criminal restraint and criminal battery in an off-campus altercation with his ex-girlfriend, also a KU student. KU ordered Yeasin not to contact his ex-girlfriend.

In the fall of that same year, Yeasin made comments about his ex-girlfriend on his private Twitter account, according to Marieke Tuthill Beck-Coon, senior program officer with the Foundation for Individual Rights in Education (FIRE). Although he did not specifically name her in the tweets and she did not have access to his account, his

ex-girlfriend discovered his comments and filed a complaint with KU. The university expelled him after a Title IX investigation, citing the law's protection for students against harassment.

Yeasin then sued KU for violating his freedom of speech since both the tweets and altercation happened off campus.

"Title IX does not override the Constitution," said Frank LoMonte, executive director of the Student Press Law Center (SPLC).

The SPLC and FIRE filed a brief in the case, challenging KU's assertion that a university has jurisdiction over speech that takes place off campus.

"No matter how honorable the motivation, a public university does not have limitless disciplinary authority to regulate everything a student says and does off campus," they wrote in their brief.

Kansas State filed its own brief, stating, "Title IX does not require schools to take responsibility for instances of off-campus sex discrimination (including sexual violence or sexual harassment) unless the school has substantial control over the context in which the alleged conduct occurs."

Beck-Coon said she is glad Kansas State filed the brief. "It's very good to see another university weighing in on the situation and taking up for free speech."

The case was brought to appeals by KU after a district court judge originally ruled in favor of Yeasin last year. LoMonte said the case is a question of just how far a university can go to dictate what students can say outside of campus.

"When you police what happens off campus, then you've taken ownership of that speech," LoMonte said.

Beck-Coon said the case could have an effect on other free speech cases. "It's especially relevant within Kansas," she said. "Other states might also look at this case for guidance as well."

The court met in Topeka to hear the appeal, though a decision will not come until later. Reported in: *The Collegian*, July 15.

Internet

Washington, D.C.

The U.S. Court of Appeals for Federal Circuit heard oral argument August 11 on a case that net neutrality activists say is about government asserting its ability to block Internet transmissions. A different Washington appeals court, the U.S. Court of Appeals for the District of Columbia, is scheduled to hear oral argument December 4 in the challenge by Internet service providers's (ISPs) to rules the government imposed to prevent them from blocking or throttling. But the Federal Circuit, which specializes in intellectual property protection and related subject matter cases, could get to sink its teeth into the issue as well via the August argument, though the subject matter more closely

resembles the debate over the government's role in preventing online piracy.

A spokesperson for Public Knowledge said the case "involves an effort to use a trade agency to implement the same troubling website-blocking tactics as SOPA [The Stop Online Piracy Act] and PIPA [The PROTECT IP Act] offered under the guise of trade regulation."

The case involves a challenge to an International Trade Commission (ITC) decision last fall concluding that the ITC's authority to prevent the importation of infringing products extended to digital models, data and treatment plans for dental appliances.

The Motion Picture Association of America, which supported SOPA/PIPA and opposed the appeal of the ITC decision, said back in April: "Congress has given the ITC broad authority to protect U.S. industries from unfair acts in importation—including online copyright infringement—with a jurisdiction that encompasses electronic transmissions. Undercutting the ITC's jurisdiction in this area will hurt the rapid growth of domestic and international marketplaces for distributing content digitally, and ultimately undermine the Commission's mandate to protect American businesses."

Public Knowledge has said it is concerned that the Motion Picture Association of America will leverage the decision to force websites to block content, an approach to online piracy prevention Public Knowledge argued was rejected in the SOPA/PIPA debate outcome. Reported in: *Broadcasting and Cable*, August 10.

Jackson, Mississippi

Mississippi's attorney general is trying to police online speech by capitalizing on the reams of data Google stores about its users. James Hood, has issued a 79-page subpoena to Google asking for a massive amount of data about the identities, communications, searches, and posts of people anywhere in the United States who use its services, including YouTube and Google+.

The kicker? The state is asking for all this information for anyone speaking about something "objectionable," "offensive," or "tangentially" related to something "dangerous," which it defines as anything that could "lead to physical harm or injury." The attorney general claims that he needs information about all of this speech to investigate Google for state consumer protection violations, even though the subpoena covers such things as copyright matters and doesn't limit itself to content involving Mississippi residents.

Earlier this year, a district court judge froze Mississippi's investigation into Google. The state appealed the ruling to the U.S. Court of Appeals for the Fifth Circuit, where the ACLU filed a brief August 3 against the attorney general's attempt to violate the First Amendment rights of the millions of people who use the Internet.

The case has already gotten attention because of Google's claims that Mississippi is attempting to censor its editorial choices, by dictating what can appear in search results or on YouTube, for example. The ACLU brief attempts to highlight an overlooked aspect of the case—that millions of people's rights to free speech, anonymity, and privacy are also at stake.

The government is well aware of all the personal information that's being stockpiled online and often serves subpoenas on private companies for information about individuals and groups under investigation. But the Constitution has established protections that keep the government from getting into our business without just cause, especially when our First Amendment rights to express ourselves freely and anonymously are at stake.

Yet efforts by law enforcement to engage in wholesale monitoring of certain groups online are increasing. Just a couple of weeks ago, it was revealed that the Department of Homeland Security has been scrutinizing #BlackLivesMatter for constitutionally protected activity. This kind of surveillance chills the exercise of First Amendment freedoms, especially considering how much sensitive and important speech—like political or human rights advocacy—takes place on the Internet.

Needless to say, “objectionable,” “offensive,” or “tangentially” related to something “dangerous,” are terms so broad that they could encompass a huge swath of content on the Internet—and result in information about millions of people's online activity being handed over to the government. Virtually any topic could be said to “tangentially” lead to physical harm or injury in certain cases—from organizing protests to skydiving. Most importantly, the First

Amendment protects the right to speak about dangerous, objectionable, and offensive things without fear that the government will be scrutinizing your speech or trying to find out your identity.

And let's not assume it's innocuous YouTube videos of skateboarding 6-year-olds, football highlight reels, or fireworks displays that the attorney general wants to waste his office's time looking through—even though these would be covered by the subpoena. History has shown us that politically dissident and minority groups have been targeted for monitoring, and those are the groups that are most likely to be chilled from speaking. Politically active movements online, such as #BlackLivesMatter, often discuss strategy, organize protests, and post videos of police brutality (which certainly meets the attorney general's definition of “dangerous”) online.

Not only that, but the right to online anonymity is threatened. Domestic violence support groups can provide a safe space online for victims to speak anonymously and honestly, including about the dangers of violence they face. Yet these activities could be seriously harmed if Mississippi is allowed to collect information about the people who engage in them. It's no stretch to imagine that people will speak less freely if things like their email addresses, login times, and IP addresses could be handed to law enforcement whenever they say something that could be considered dangerous or offensive.

For these reasons, the ACLU asked the Fifth Circuit to order the state to back off and keep the Internet a place where people can speak freely, without fear of government harassment or investigation. Reported in: aclu.org, August 3. □

success stories



library

Granbury, Texas

An attempt to ban two LGBT-themed children's books from a Granbury public library has failed, with Hood County commissioners declining to vote on the issue. The books in question, *My Princess Boy* and *This Day in June*, were challenged by dozens of Hood County residents who demanded that the books be removed from the library or relocated from the children's section. While library director Courtney Kincaid agreed to move *This Day in June* to the adult nonfiction section, she refused to relocate *My Princess Boy*.

Commissioners decided not to vote on the issue after consulting with the county attorney, who told them "that previous case law suggests that removing, relocating, or in any way restricting access to the books would likely constitute unlawful censorship." The decision not to vote means the books will stay where they are.

My Princess Boy, by Cheryl Kilodavis and illustrated by Suzanne DeSimone, is based on the author's son. The book tells the story of a boy who prefers to wear clothes that some people consider feminine. *This Day in June*, by Gayle E. Pitman and illustrated by Kristyna Litten, is a book about a pride parade that also focuses on LGBT history.

The decision came after a large crowd attended a nearly three-hour-long public meeting July 14 of the commissioners court, the county's chief administrative body. The meeting drew both supporters and opponents of the books. One Hood County resident, James Logan, accused the library of anti-religious sentiment, saying, "This library, as many

on the progressive left do, hides their contempt for Judeo-Christian values behind the right of free speech."

Others defended the books. Dallas/Fort Worth, resident Deanna Mehaffey urged the commissioners to let the books remain on the library shelves, saying, "These are our civil liberties and our rights as taxpayers. Libraries serve the entire population of the community."

Kincaid, the librarian, echoed that sentiment, and offered advice to those who disapproved of the books: "Don't check [them] out. We have many books and items that they would appreciate to check out." Reported in: *Los Angeles Times*, July 15.

schools

Asheville, North Carolina

Buncombe County school board members voted July 2 to keep the novel *The Kite Runner* on the school system's approved reading list for all county high schools. The unanimous decision followed a complaint about the book filed earlier this year by former school board member and parent Lisa Baldwin.

A teacher planned to use the book in an honors English class at Reynolds High School. The school suspended the use of the book while the complaint was heard. Both a school-level committee and a district-wide committee recommended keeping the novel by Khaled Hosseini on the approved reading list.

"Part of it (the book) was very troublesome. It was painful to read at times. But overall I'm glad I read it," school board member Chip Craig said during the meeting. Craig pointed out that the school system policy says the board believes "professional educators are in the best position to determine whether a particular instructional material is appropriate."

He said an "impressive list of educators" had reviewed the book.

Baldwin took issue with the language and the adult themes. During a committee meeting last month, she spoke about a passage that describes a rape. The novel tells the story of a wealthy boy in Afghanistan and his best friend, who is the son of his father's servant. The servant's son is beaten and raped by an older boy.

Baldwin also objected because the teacher was using the book instead of *All Quiet on the Western Front*, which had been used previously.

"This decision is about more than a sexually explicit novel written at a sixth-grade reading level. It is about disregard for academic rigor and the proper guardianship of our children," Baldwin said following the decision. "This is not about book banning or censorship but judging whether a book is suitable for whole class instruction. The book has stayed in school libraries, public libraries and bookstores."

The Reynolds High teacher who planned to use the book sent a note home to parents informing them of the

content and letting them know that their child could opt out of reading the book. Because of the complaint and the required review, the students read an alternate book in the class.

Students should have “as much opportunity as possible to make a decision that in two years they’ll be making anyway,” said board member Amy Churchill. “I thought one of the things we were trying to teach our students was the ability to think for themselves, handle difficult material and not cave to what people tell them that they should think and believe but to read something for themselves and make their own decision.”

The board’s decision applies to the use of the book at all county high schools. “Unless the board decides otherwise, there could not be any challenge to it (at the other high schools),” said board attorney Dean Shatley. But Shatley said parents at those schools can still have their child opt out if they had objections to the use of the book in the classroom.

The book has been on the school system’s approved reading list since at least 2010. Reported in: *Asheville Citizen-Times*, July 2.

colleges and universities

Davis, California

The University of California, Davis (UC Davis) has reversed its punishment of a student club, concluding that the Ayn Rand Society at UC Davis (ARS) did not violate the university’s trademark policy by using the university’s name in its club title and Facebook page Web address. The about-face came after the Foundation for Individual Rights in Education (FIRE) wrote to UC Davis last year, asking university officials to review and retract the punishment because it violated the students’ First Amendment rights.

“FIRE is pleased that UC Davis took this opportunity to examine its policies and develop an approach that safeguards the First Amendment rights of its students,” said Ari Cohn, an attorney and senior program officer for legal and public advocacy at FIRE. “Too many colleges and universities attempt to control their public image by enacting overbroad policies that unacceptably regulate all uses of the institution’s name by students.”

ARS contacted FIRE for help after the university’s Center for Student Involvement (CSI) demanded ARS change the URL of its Facebook page, which contained the letters “UCD.” The Center said the use violated CSI’s trademark policy, which warns that violators could face criminal punishment. After ARS reported that it could not change the URL, CSI instructed the group to delete the Facebook page entirely. When ARS refused to comply, the group lost its “good standing” status, including its listing on UC Davis’ student organization search page, as well as its ability to reserve campus meeting rooms and apply for funding and grants.

FIRE wrote to UC Davis on December 10, 2014, reminding the university that the law protects non-commercial use of trademarks where there is no substantial likelihood of creating confusion. FIRE noted that ARS’ use had no commercial purpose and would not mislead readers into believing the group’s speech was officially sanctioned or endorsed by UC Davis.

In August, Center for Student Involvement Director Anne Reynolds Myler notified FIRE and ARS President Hong Phuc Ho Chung that UC Davis concluded ARS’ use “is consistent with our practice of allowing use of the name to designate location (e.g., Ayn Rand Society at UC Davis).” Myler wrote that the club’s status would be restored and thanked FIRE and Chung for bringing the policy to UC Davis’ attention.

“This has given us an opportunity to think critically about our policy and has helped us clarify our practice moving forward,” Myler wrote. Reported in: *thefire.org*, August 27.

Yucaipa, California

The administration at Crafton Hills College, a community college in Yucaipa, recently denied a student’s request to remove what she considered objectionable material from a college course on graphic novels. After enrolling in the course and purchasing her books, Tara Schultz was surprised to learn that some of the titles included mature material. “I expected Batman and Robin, not pornography,” she said.

The four books on the syllabus she found objectionable included: *Fun Home*, by Alison Bechdel (Houghton Mifflin, 2006); *Y: The Last Man*, Vol. 1, by Brian Vaughan (Vertigo, 2003); *The Sandman, Vol. 2: The Doll’s House*, by Neil Gaiman (1990, DC Comics); and *Persepolis*, by Marjane Satrapi (Pantheon, 2004).

The course professor, Ryan Bartlett, defended his choice of these books: “I chose several highly acclaimed, award-winning graphic novels in my English 250 course, not because they are purportedly racy but because each speaks to the struggles of the human condition,” he explained. “The course in question has also been supported by the faculty [and] administration and approved by the board.”

Schultz and her parents spoke to the college administration to protest the material. Their ideal outcome, they stated, was to have the books removed from all class syllabi and the school bookstore—but if that were not possible they wanted to be sure students would be aware of the potentially objectionable content before purchasing. “At least get a warning on the books,” Schultz said. “At most I would like the books eradicated from the system. I don’t want them taught anymore. I don’t want anyone else to have to read this garbage.”

Although Crafton Hills College instructors are required to distribute a syllabus listing the material covered in class on the first day of the term, Schultz did not raise her

objections to the books until after the January 30 deadline to drop the class. She “chose to remain in the class to avoid receiving a zero.”

Following the Shultz family’s formal objections, Crafton Hills College president Cheryl Marshall issued a statement denying their request to remove the books from the syllabus. “I support the college’s policy on academic freedom which requires an open learning environment at the college,” Marshall said. “Students have the opportunity to study controversial issues and arrive at their own conclusions and faculty are to support the student’s right to freedom of inquiry. We want students to learn and grow from their college experiences; sometimes this involves reaffirming one’s values while other times beliefs and perspectives change.” Reported in: *Library Journal*, July 20. □

book banning . . . from page 137

the same of books with references to violence (48%, same as in 2011).

Interestingly, similar numbers of adults would like to remove books that include witchcraft or sorcery (44%, up 3 points) and those with references to sex (43%, down 2 points) from school library shelves. A little less than four in ten each would like to keep out books with references to drugs or alcohol (37%, down 4 points) and books that include vampires (36%, up 2 points).

In addition, a third of the respondents (33%) don’t think children should be able to get the *Koran* from their school library and three in ten say the same of the *Torah* or *Talmud* (29%). A fourth don’t think children should be able to get books that question the existence of a divine being or beings from school libraries (26%), while two in ten say the same of books that discuss creationism (19%) and 16% feel this way about books that discuss evolution.

Americans are least opposed to restricting children’s school library access to *The Bible*, (13%, up 2 points), the book currently crowned “America’s favorite” by a recent Harris Poll.

However, where adults are wary of what types of books children should be able to get their hands on, many are less concerned with what information they might expose themselves to by reading controversial or banned literature. Two-fifths of Americans admit they are more likely to read a book if it’s controversial (40%), while three in ten are more likely to read a book if it’s banned (30%). Millennials are especially likely to display both these inclinations.

- More likely to read a book if it’s controversial (53% Millennials vs. 34% Gen X, 33% Baby Boomers, 33% Matures)
- More likely to read a book if it’s banned (46% vs. 29%, 22%, 17%, respectively)

“The fact that people are concerned about books speaks to the fact that people still believe in books and words as powerful things, that they have the power to change hearts and minds,” said Deborah Caldwell-Stone, deputy director of the American Library Association (ALA) Office for Intellectual Freedom (OIF). “However, it does reflect a concern of [OIF], that the easy idea that we simply ban a book we don’t like reflects on our civic education in the United States—that we’re not talking about, teaching about, thinking about the Bill of Rights and the First Amendment.”

The survey’s results would seem to show a rise in conservative attitudes toward censorship, especially in the context of school libraries. But Peter Hart, communications director for the National Coalition Against Censorship, cautioned, “We have to be careful about the conclusions that can be drawn from it because the questions are so overarching. I think what they’re registering is a . . . reaction that is indicative of something, but might not be as definitive as the results seem to indicate.”

Caldwell-Stone pointed out that the survey’s questions about school libraries reflect a different set of attitudes from those surrounding public or academic libraries. Coupled with the broad nature of the questions, this could encourage a less nuanced range of answers. For instance, the children’s “Curious George” series contains references to alcohol, and *To Kill a Mockingbird* contains an explicitly violent scene. “It’s easy to say ‘violence is a bad thing’ from a broad perspective,” she noted, “but when we get down to actual facts and cases about particular books . . . would these 2,200 people ban *To Kill a Mockingbird* from school libraries? I think we would get a far different response on the survey if we actually got into the weeds and started talking about what books [people are] talking about.” The number of book challenges reported to OIF, said Caldwell-Stone, has remained relatively stable over the past few years, although many challenges are not reported to the agency or are reported in the press instead.

In addition, the idea of a rating system for books has no real parallel in other media, said Caldwell-Stone. The U.S. motion picture rating system, established in 1968, is advisory in nature only, with no force of law behind it. “A private movie theater owner might bar a young person from seeing a movie if they’re under 16 and it’s R-rated,” she pointed out. “It’s not the government taking that action.” There are numerous places people can turn to in order to make informed decisions about books, said Caldwell-Stone, “so parents have a multiplicity of resources to turn to, and librarians are perfectly willing to point these out or help parents find them . . . so that they have an idea of what books are about when their children are picking them out or reading them. The fact that it might take a few more minutes to read a review or a paragraph about a book speaks to the fact that books are complex, and they deal with ideas in different ways.”

This perception of librarians as monitors “could, in fact, be driving some of the changes in attitudes toward whether any books should be banned in general,” speculated Larry Shannon-Missal, managing editor at the Harris Poll. “With the rise of electronic books . . . some people are concerned that this takes the gatekeeper out of the equation, and makes certain inappropriate books more available to children.”

Hart would like to see a follow-up survey examine attitudes toward different types of books and subject matter in order to drive the conversation further. “We thought it would be helpful to ask questions that would try to draw people out a little bit. You say that you are in favor of banning any kind of book—well what about . . . *The Great Gatsby*? How do you feel about *The Diary of Anne Frank*? Or *Beloved*? . . . Who knows what someone has in mind when they’re answering that question? A terrorist how-to guide? Are they thinking literature?”

Shannon-Missal, too, hopes to follow up on the 2015 research “with some attitudinal questions layered in about . . . what is moving the needle on American opinion—see if we can dig a little deeper.” Reported in: *theharrispoll.com*, July 8; *Library Journal*, July 31. □

IFC report to ALA Council . . . from page 142

about such systems. In fact, providing access to sources containing information on rating systems in order to meet the specific information seeking needs of individual users is perfectly appropriate.

Resolution on the Passage of the USA FREEDOM Act and Reaffirming ALA’s Commitment to Surveillance Law Reform

Whereas the recent enactment of the USA FREEDOM Act of 2015 and the reforms that it will effect will significantly contribute to the necessary recalibration of the nation’s privacy and surveillance laws to restore civil liberties lost upon passage of the USA PATRIOT Act;

Whereas passage of the USA FREEDOM Act accomplished only a small fraction of all such necessary change;

Whereas the ALA has previously vigorously committed itself to defend the privacy rights of library users and supported open government, government transparency, and accountability;[§] and

[§] See, e.g., Resolution Reaffirming the Principles of Intellectual Freedom in the Aftermath of Terrorist Attacks (2002); Resolution on the USA PATRIOT Act and Related Measures That Infringe on the Rights of Library Users (2003); Resolution on the Terrorism Information Awareness

Whereas both individually and collectively, librarians have the responsibility and ability to again contribute significantly to ending mass surveillance and to the passage of other critical additional surveillance law reforms through education of the public, professional practice, civic engagement, and political action; now, therefore, be it

RESOLVED, that the American Library Association, on behalf of its members:

1. commends the authors and primary supporters of the USA FREEDOM Act for their efforts, courage, and success in securing its passage;
2. recommits itself to the maximum possible restoration of the public’s privacy and civil liberties through statutory and other legal reforms; and
3. reaffirms its commitment to fostering maximum transparency in all workings of government. □

FTRF report to ALA Council . . . from page 143

government, “promote resentment toward a race or class of people,” are “designed primarily for pupils of a particular ethnic group,” or “advocate ethnic solidarity instead of the treatment of pupils as individuals.”

The plaintiffs sued the Superintendent of Public Instruction after TUSD was forced to cease its Mexican-American Studies program and remove books from its classrooms. After the district court upheld the statute, the students appealed to the Ninth Circuit Court of Appeals. FTRF then joined with the American Library Association, REFORMA, the Black Caucus of the ALA and the Asian/Pacific American Librarians Association to file an *amicus* brief in support of the students’ First Amendment claims.

The Ninth Circuit Court of Appeals heard the parties’ oral arguments on January 12, 2015. Constitutional scholar Erwin Chemerinsky, dean of the law school at the University of California, Irvine, argued the case on behalf of the students. Commenting on the case, he had high praise for the brief authored by FTRF’s legal counsel.

Program (2003); Resolution on the USA PATRIOT Act and Libraries (2005); Resolution on the Use and Abuse of National Security Letters: On the Need for Legislative Reforms to Assure the Right to Read Free of Government Surveillance (2007); Resolution on the Reauthorization of Section 215 of the USA Patriot Act (2009); Resolution on the Need for Reforms for the Intelligence Community to Support Privacy, Open Government, Government Transparency, and Accountability (2013); Resolution on Curbing Government Surveillance and Restoring Civil Liberties (2014); and Resolution Commends (sic) Sen. Patrick Leahy and Congressman James Sensenbrenner for Sponsoring the USA FREEDOM Act (2014).

We now wait for the Ninth Circuit to hand down their decision. We thank ALA, REFORMA, BCALA, and APALA for their support of this effort.

THE JUDITH F. KRUG MEMORIAL FUND

Banned Books Week: FTRF's Judith F. Krug Memorial Fund, created and supported by donations made in memory of FTRF's founding executive director, funds projects and programs that assure that her passion to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely will continue far into the future.

On June 11, FTRF announced the recipients of this year's grants to support their events celebrating Banned Books Week this fall. The five grantees for 2015 are:

- Chapel Hill Public Library, Chapel Hill, North Carolina
- Kurt Vonnegut Memorial Library, Indianapolis, Indiana
- Remembering for the Future Community Holocaust Initiative, Neptune Beach, Florida
- SA Youth, an organization that works with at-risk youth in San Antonio, Texas
- Virginia Beach Public Library, Virginia Beach, Virginia

The grantees' proposals for 2015, the sixth year of Krug Fund grants, feature programs addressing the loss of intellectual freedom and the book burnings and bannings that took place during the Nazi regime; a "Blind Date with a Banned Book" for youth; a new series of Banned Books Trading Cards and the development of a curriculum for teachers to discuss banned books in schools; interactive displays in all ten libraries in the system featuring a "Selfie-Spot" where patrons will capture themselves with the one book they would not want to live without; and a week-long "lock-in" with banned books.

As with past years, recipients will provide FTRF with photos, videos, and written reports of their events. For more information, please visit www.ftf.org/?Krug_BBW.

Intellectual Freedom Education: The Krug Fund also provides funding for various initiatives to provide intellectual freedom curricula and training for LIS students. I am very pleased to report that FTRF will continue to support its successful partnership with the Graduate School of Library and Information Science (GSLIS) at the University of Illinois at Urbana-Champaign (Illinois) to offer an online graduate-level course on intellectual freedom for LIS students around the country. Under the agreement, FTRF will continue to support the class for an additional three years. The course is taught by GSLIS professor Emily Knox, who earned her Ph.D. from Rutgers University School of Communication and Information. Knox's scholarship, which

encompasses intellectual freedom and censorship, print culture and reading practices, and information ethics and policy, has earned her the acclaim of other LIS academics.

"Intellectual Freedom and Censorship" is a 2-credit course and will be held August-October 2015. It is open to any student enrolled in an LIS degree program. As part of the collaboration, Freedom to Read Foundation staff and volunteers will lend their expertise as guest speakers, and FTRF and ALA Office for Intellectual Freedom archival materials will be made available to students. Those at Illinois and other institutions in the WISE consortium (wise-education.org) can enroll via the WISE system. Students at non-WISE institutions can enroll by calling Tonyia Tidline, GSLIS director of professional development, at (217) 244-2945 or tidline@illinois.edu. For details, visit www.ftf.org/?Krug_Education.

STRATEGIC PLAN REVIEW

This spring, FTRF trustees and many liaisons met for half a day to review the progress of our 2012 strategic plan. As a result of those discussions, the trustees have identified eleven priority tasks to advance the implementation of the 2012 plan and to draft a new plan for 2016. At this meeting, we formed a committee to address the identified priorities and to begin the process of envisioning the future of the Freedom to Read Foundation.

2015 ROLL OF HONOR AWARD RECIPIENTS JONATHAN BLOOM AND JAMES NEAL

It is my pleasure and privilege to introduce this year's co-recipients of the 2015 Freedom to Read Foundation Roll of Honor Award, James G. Neal and Jonathan Bloom. Neal is the recently retired vice president for information services and university librarian at Columbia University, an ALA Councilor, and member of the ALA Executive Board and the FTRF Board of Trustees. Bloom, a litigator who specializes in media, First Amendment, and intellectual property law, is counsel to Weil, Gotshal & Manges LLP and a former trustee of the Freedom to Read Foundation. We are delighted to have the opportunity to celebrate their accomplishments at this meeting.

2015 CONABLE CONFERENCE SCHOLARSHIP

I am also pleased to announce that FTRF has named Gretchen LeCheminant and Amy Steinbauer as co-recipients of Gordon M. Conable Conference Scholarship. This is the first time in the eight-year history of the Conable Scholarship that multiple awards have been given.

LeCheminant is a recent graduate of the University of Texas at Austin (UTA) School of Information. In her capacity as co-director of the UTA & Texas Library Association student group, she helped to organize a Banned

Books Week photo booth. She also served as co-editor with Camille Callison and Loriene Roy of the forthcoming *Indigenous Notions of Ownership & Libraries, Archives, & Museums*, a book about the needs of indigenous peoples. She will be going into youth services, where she hopes to combine the love and understanding that teenagers have for new media with the fundamental and long-standing right to read as supported by libraries.

Steinbauer also was active with her student chapter of ALA while attending University of Hawaii. She continued her activism after graduating while volunteering in public school libraries, working to keep diverse books in school libraries. As a public librarian, she continues to support youngsters in their wide selection of choices and to help make diversity books remain on the shelves. Steinbauer currently works for the Beaumont Library District in California and resides in Riverside, where Gordon Conable lived for many years until his death.

The Conable Scholarship was created to honor the memory of former FTRF President Gordon Conable and to advance two principles that Conable held dear: intellectual freedom and mentorship. His unexpected death in 2005 inspired his wife, Irene Conable, and the FTRF Board to create the Conable Fund, which provided the means for LeCheminant and Steinbauer to attend this conference and attend intellectual freedom meetings and programs here. They will prepare a formal report about their activities and experiences after the conference concludes.

EXECUTIVE DIRECTOR BARBARA JONES

Executive Director Barbara Jones will retire at the end of the year. The Board of Trustees would like to thank Barbara for her unflagging commitment to moving the mission of the foundation forward for the last six years. A long-time member and former trustee of the foundation, she took on the difficult task of guiding FTRF following the death of founding Executive Director Judith Krug and handled the challenge with grace and aplomb. FTRF has thrived under her leadership, with the development of its first strategic plan, the formation of a successful partnership with the Graduate School of Library and Information Science (GSLIS) at the University of Illinois at Urbana-Champaign to offer an online graduate-level course on intellectual freedom for LIS students around the country, and the expansion of FTRF's mission to encompass community activists and diverse books initiatives. We are grateful for her devoted service and wish her well as she continues her work for intellectual freedom on her own terms.

FTRF MEMBERSHIP

Membership in the Freedom to Read Foundation allows the Foundation to continue building our organizational capacity in order to support our litigation, education, and

awareness campaigns. It is the critical foundation for FTRF's work defending First Amendment freedoms in the library and in the larger world. As always, I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become organizational members. Please send a check (\$35.00+ for personal members, \$100.00+ for organizations, and \$10.00+ for students) to:

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

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

Americans still love libraries . . . from page 144

Second, library as place. At the Atlanta Public Library's Sweet Auburn branch—one of the few places in Atlanta's 1930s segregated society where blacks felt welcome—director Annie Watters recalled one summer when ten-year-old Martin Luther King, Jr. came to the library several times during the week. "He would walk up to the desk and . . . look me straight in the eye." "Hello, Martin Luther," she would respond, always calling him by his first and middle names; "what's on your mind?" "Oh, nothing, particularly." For Watters, that was the cue that King had learned a new "big word," and they then initiated a conversation in which King used the word repeatedly. Another game involved poetry. Again, King would stand by the desk, waiting. "What's on your mind, Martin Luther?" Watters would ask. "For I dipped into the future, far as the human eye could see," he responded. Watters immediately recognized the poem, and finished the verse: "Saw a vision of the world, and all the wonder that would be."

For many Americans (and I'll bet most of my readers) visiting a public library also constituted the first place in the public sphere where they enjoyed adult privileges, and by obtaining a library card as a child formally accepted a civic responsibility to respect public property. That sense of responsibility does not go away easily. One of Captain Chesley "Sully" Sullenberger's concerns after he landed US Airways Flight 1549 in New York's Hudson River on January 15, 2009, was a Contra Costa (CA) Public Library book he had aboard his plane. It might come back late, he told the Library, perhaps even water-damaged.

Third, the transformative potential of commonplace stories. In a 2008 interview, 88-year-old Pete Seeger recalled: "At age 7, a librarian . . . recommended me a book . . . about a teenager who runs away from his stepfather—who's

beating him—and is adopted by a middle-aged Indian whose tribe was massacred, and whose wife was sold into slavery, and is living alone.” That he remembered this story so vividly eight decades later, a *New York Times* reporter noted in a 2014 obituary, was “fitting for someone who went on to engage issues of conscience.”

For Oprah Winfrey, reading was “an open door for freedom in my life” that “allowed me to see . . . a world beyond my grandmother’s front porch” in Mississippi, “that everybody didn’t have an outhouse, that everybody wasn’t surrounded by poverty, that there was a hopeful world out there and that it could belong to me.” In a small Milwaukee apartment as a nine-year-old in 1963, she read a public library copy of *A Tree Grows in Brooklyn*—“the story of Francie Nolan, whose life was full of humiliation and whose only friends were in books lining the public library shelves. . . . I felt like my life was hers.”

After her father died in 1963, nine-year-old Sonia Sotomayor buried herself in reading at her Bronx library and in the apartment she shared with her mother and brother. Her reading, she admitted, was her “solace and only distraction” that got her through this “time of trouble.” Of particular interest was “Nancy Drew,” who “had a powerful hold on my imagination. Every night, when I’d finished reading and got into bed and closed my eyes, I would continue the story, with me in Nancy’s shoes until I fell asleep.” Her mind, she noted, “worked in ways very similar” to Nancy’s. “I was a keen observer and listener. I picked up on clues. I figured things out logically, and I enjoyed puzzles. I loved the clear focused feeling that came when I concentrated on solving a problem and everything else faded out.” In 1963, most American public libraries had Nancy on their shelves. Not NYPL, however, where librarians considered series fiction “trash.” Instead, Sotomayor got her copies of Nancy from her mother—for good behavior. NYPL finally dropped the ban on series fiction in 1976.

For generations now library and government officials have argued that the public library’s most important role is to provide access to useful information that develops intelligent consumers and informed citizens—the kind of information Thomas Edison pursued in his public library that, many argue, people can now retrieve on their computers, at home. Public library users, however, show a different set of priorities. For them the tens of thousands of spaces public libraries provide for many purposes and the billions of commonplace stories they circulate in a variety of textual forms are as important as, perhaps even more important than, access to information, and for a variety of reasons.

Recent research in the fast-developing field of social neuroscience shows that substantial benefits accrue to those who experience high levels of face-to-face contact, including improved vocabularies, an increased ability to empathize, a deeper sense of belonging, and—most important—a longer lifespan. Neuroscientific research that focuses on the social nature of commonplace reading reinforces these

conclusions. Fiction, notes research psychologist Keith Oatley, “is a particularly useful simulation because negotiating the social world effectively is extremely tricky, requiring us to weigh up myriad interacting instances of cause and effect. Just as computer simulations can help us get to grips with complex [scientific] problems, . . . so novels, stories and dramas can help us understand the complexities of social life.”

For generations now, adolescent series fiction and adult westerns, romances, horror, and science fiction novels have driven public library circulation. They still do. Through commonplace stories like these that they circulate by the billions American public libraries help empower, inform, intellectually stimulate, and inspire their readers, viewers, and listeners, just like they did for Seeger, Winfrey, and Sotomayor. And through the tens of thousands of spaces they make available to their patrons they help construct community in multiple positive ways through the billions of face-to-face encounters they nurture and the civic responsibility they teach, just like they did for Martin Luther King, Jr., and Sully Sullenberger.

Information, place, and reading. Americans love their public libraries for all these reasons—justification enough to encourage even more of our citizens to use these much-loved community incubators of personal happiness and informal self-education during September’s “National Library Card Sign-Up Month.”

Wayne Wiegand is the author of Part of Our Lives: A People’s History of the American Public Library. □

psychologists ban work . . . from page 144

The report concluded that some of the association’s top officials, including its ethics director, sought to curry favor with Pentagon officials by seeking to keep the association’s ethics policies in line with the interrogation policies of the Defense Department, while several prominent outside psychologists took actions that aided the CIA’s interrogation program and helped protect it from growing dissent inside the agency.

The association’s ethics office, the report found, prioritized the protection of psychologists—even those who might have engaged in unethical behavior—above the protection of the public. Two former presidents of the psychological association were members of a CIA advisory committee. One of them provided the agency with an opinion that sleep deprivation did not constitute torture, and later held a small ownership stake in a consulting company founded by two men who oversaw the agency’s interrogation program, it said.

The association’s ethics director, Stephen Behnke, coordinated the group’s public policy statements on interrogations with a top military psychologist, the report said, and

then received a Pentagon contract to help train interrogators while he was still working at the association, without the knowledge of the association's board.

The Hoffman report concluded that the association seemed to want to please the Pentagon rather than stick up for ethical standards, and that the activities of key leaders of the association buttressed the argument for using interrogation techniques many consider to be torture. In some cases, administration officials were nervous about some techniques but moved ahead after assurances from APA leaders.

APA leaders, in a statement following the report's release, apologized for their actions and pledged reforms so that psychologists in the future would not participate in the kinds of interrogations discussed in the report.

The question of whether social scientists should help government efforts to combat terrorists or foreign states is deeply controversial. While many scholars believe that government officials would benefit from reading their scholarship, direct help dealing with prisoners or civilians in combat areas is another matter.

The American Anthropological Association has generally taken a hard line against working with the government in ways that its leaders and rank and file have concluded would violate its ethical standards. That association cheered the recent announcement that the Human Terrain System, in which anthropologists were embedded with units in Iraq and Afghanistan, has ended.

Psychologists, however, have taken a different approach. The APA—which includes many nonacademic psychologists—has been accused now for years of not doing enough to deal with the ethical issues of helping intelligence forces. Further, the APA has been accused of much of what the report found to be true—and has to date denied wrongdoing.

In 2014, when a book charged the APA with protecting and encouraging psychologists involved in activities many view as torture, the association disputed the book's findings.

In 2013 at the University of Missouri at Columbia, and then again in 2014 at Northern Arizona University, faculty members and others objected to the possible hiring of Col. Larry James, retired, a former Army psychologist, who worked in both Abu Ghraib prison in Iraq and the military detention center at Guantanamo Bay. While his work was widely praised by some, other accused of him helping the military with unethical activity.

In 2010, the APA toughened its ethics code. In 2008, controversy emerged after a new book said that a prominent psychology professor's research may have been used without his knowledge to help U.S. authorities engage in torture in the Middle East. In 2007, some psychology departments charged that the APA was not doing enough to abide by its own ethical standards. Reported in: *wired.com*, August 7; *academeblog.com*, July 10; *New York Times*, July 10; *insidehighered.com*, July 13. □

intellectual freedom bibliography

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