

JOURNAL OF

# INTELLECTUAL FREEDOM & PRIVACY

Office for Intellectual Freedom, an Office  
of the American Library Association

Upton Sinclair  
selling the fig leaf  
edition of *Oil* in  
Boston

## TURNING A NEW LEAF: EXPANDING OUR DISCOURSE ON INTELLECTUAL FREEDOM

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SPRING 2016  
VOL. 1 \_ NO. 1

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AND INTELLECTUAL  
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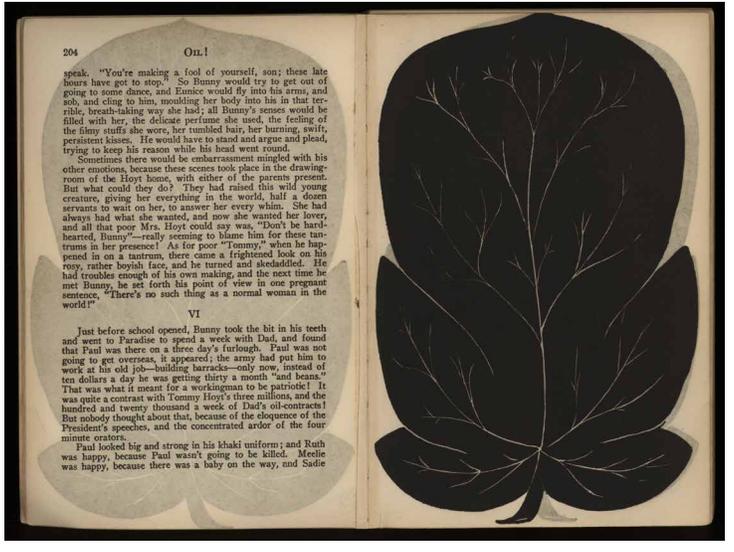
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# SPRING 2016 \_ ABOUT THE COVER



 The cover photo shows author Upton Sinclair selling his novel, *Oil!*, the Fig Leaf Edition, on the Boston Common in 1927.

*Oil!* is Upton Sinclair's muckraking, satirical novel about the Teapot Dome Scandal during the Harding Administration. It was published by Albert and Charles Boni, New York City, in 1927.

At the time, the federal Comstock Act (1873) used the United States Post Office to suppress mail delivery of books deemed "obscene." At the same time, organizations like Boston's Watch and Ward Society actively monitored and supported this censorship. In fact, this is how the "banned in Boston" phrase became part of popular culture.

Sinclair's book was, indeed, banned in Boston for a motel sex scene. Sinclair's publisher printed 150 copies with the offending nine pages blacked out with fig leaves. The University of Illinois Rare Book and Special Manuscripts Li-

brary is the proud owner of one of the 150 copies printed by Sinclair's publisher (pictured left).

Source: Neil Miller, *Banned in Boston: The Watch and Ward Society's Crusade Against Books, Burlesque, and the Social Evil* (Beacon Press, 2010).

Photo courtesy of the Rare Book and Manuscript Library, University of Illinois at Urbana-Champaign.

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# Journal of Intellectual Freedom and Privacy

An Expanded Opportunity for Discourse on Intellectual Freedom and Privacy



**James LaRue**, Director, ALA Office for Intellectual Freedom and Executive Director of the Freedom to Read Foundation.

**Barbara Jones**, Former Director, OIF and FTRF, and Guest Editor of *Journal of Intellectual Freedom and Privacy*, vol. 1, no. 1.

**W**e are so pleased to introduce the first issue of the *Journal of Intellectual Freedom and Privacy (JIFP)*.

*JIFP* is an expansion of *The Newsletter on Intellectual Freedom (NIF)*, published between 1952 and 2015. Ever mindful of serials librarians' woes, we hereby state that this new publication is a continuation of *NIF*, but begun over with vol. 1, no. 1. The publication will be online only. For questions on subscriptions, contact Deborah Caldwell-Stone, deputy director of the Office for Intellectual Freedom, at [dstone@ala.org](mailto:dstone@ala.org).

For the past few years, we have watched the term, "intellectual freedom," expand into many disciplines and areas of library practice. We have also noted the dramatic rise of focus on privacy in the life of libraries and policy. Finally, we want to encourage librarians and scholars to specialize in the fields of intellectual freedom and privacy. We hope that this journal will grow in content, coverage, and complexity, based on readers' input and needs. For example, we would welcome suggestions for issue no. 2. We are totally open to peer reviewed articles, thus fulfilling a need for those scholars needing to publish for promotion and tenure. We also welcome



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opinion pieces, book reviews, and news or accounts from conferences. We welcome those who want to venture beyond the traditional topics of intellectual freedom, which have

often focused on the law. For instance, what is the status of "academic freedom" in today's universities? What does the adoption of anti-bullying policies in high schools tell our youth about the limits of speech? How does Islamophobia show up at the public library? Do the comments on popular news sites signal a robust democratic exchange, or a coarsening of public dialog with its own consequences? At the same time, we promise to continue to include legal news and cases from around the country. To date, *NIF* and now *JIFP* are the only publications covering this territory on behalf of libraries and their supporters.



This issue begins with the cover history of a banned book, *Oil!* By Upton Sinclair. We welcome readers to contribute similar histories of reading materials old and new.

There is an extensive analysis of Common Core, contributed by Loretta Gaffney, adjunct professor and post-doctoral fellow at the Department of Information Studies at the University of California, Los Angeles. The topic of Common Core reflects our hope that this new journal will cover issues not always associated with intellectual freedom. Gaffney examines how the Common Core adoption by US schools has affected the intellectual freedom of faculty, students, parents, and administrators. We hope that you will respond to Professor Gaffney's article and we will publish responses in issue no. 2.

Book reviews are back! We urge readers to contact Deborah Caldwell-Stone at OIF if you are interested in being a reviewer. We will happily provide you with review copies.

Rory Litwin's essay reminds us that intellectual freedom is deeply affected by the structure and economic health of the publishing industry. We hope that you will read it and be prompted to contribute your own thoughts.

And finally, we are pleased to present the "News" section, which comprises the best of *NIF* and valuable content on legal cases and news. This is at the urging of current subscribers, and we thank Hank Reichman for compiling it.

And at this point, we want to thank Hank Reichman, professor of history emeritus at California State University at Long Beach, for being the editor of this publication for more

than thirty years. Hank will continue to compile the news section.

Also, thank you to the volunteer editorial board: Martin Garner, Rosanne Cordell, Mack Freeman, Clem Guthro, and Mike Wright. Your willingness to work on the transition from *NIF* to *JIFP* is deeply appreciated by this guest editor.

Jamie would also like to thank Barbara not only for her good work as his predecessor, but for the labor of love that is the *Journal of Intellectual Freedom and Privacy*. Advocacy for intellectual freedom in this century may look a little different than it has in the past. May our new publication signal a rebirth of commitment and passionate engagement.

Best wishes, and enjoy!  
Barbara and Jamie

## Call for Submissions

The *Journal of Intellectual Freedom and Privacy* seeks submissions related to intellectual freedom and privacy, both in libraries and in the wider world. Submissions can include:

- research articles (peer review upon request)
- articles and essays discussing or describing policies, practices, projects, legal issues, and scholarly activities about or related to intellectual freedom, privacy, and professional ethics
- personal accounts of censorship and intellectual freedom challenges
- opinion pieces and essays on current and topical intellectual freedom and privacy issues
- book and publication reviews

The *Journal of Intellectual Freedom and Privacy* encourages publishers and authors to submit books and other materials for review.

Please send all inquiries, submissions, and review copies to Deborah Caldwell-Stone, Office for Intellectual Freedom, American Library Association, 50 East Huron Street, Chicago, Illinois, 60611. Items may also be sent electronically to [dstone@ala.org](mailto:dstone@ala.org).



# The Common Core State Standards and Intellectual Freedom

## Implications for Libraries

Loretta M. Gaffney, Adjunct Professor and Postdoctoral Fellow  
at the Department of Information Studies at the  
University of California, Los Angeles.

The Common Core State Standards are a single set of codified, grade-by-grade K-12 educational standards in both English/language arts (ELA) and math that were intended to replace previous state K-12 standards and align them with one another. The National Governors' Association (NGA) and the Council of Chief State School Officers (CCSSO) developed Common Core in consultation with educational testing companies and with funding from the Bill Gates Foundation. While Common Core has enjoyed bipartisan support from Democrats and Republicans, opposition to Common Core has also generated strange bedfellows, mingling groups that would ordinarily clash, such as the Tea Party and teachers' union locals.<sup>1</sup> Disparate challenges to Common Core are best understood not as individual curricular challenges, but as moving pieces in a larger social movement context.

Critics of Common Core tend to fall into three categories.<sup>2</sup> The first two are conservative groups who emphasize different issues yet participate in overlapping social movements: social conservatives and economic conservatives. Social conservatives are mainly concerned with issues like religious freedom, parental rights, and traditional "family" values. Economic conservatives want lower taxes, fiscal responsibility, and less government, including limited or even no federal control over public education. The third group comprises progressive educators and their allies. These allies include leftist academics, some teachers' unions, liberal parent activists, and education advocacy groups.

Both conservatives and progressives believe that Common Core will be disastrous to American education.<sup>3</sup> In addition, both conservatives and progressives have used opposition to Common Core as a way to mobilize activists for public education reform.

Anti-Common Core activism might seem to represent a rare opportunity to forge common ground between

traditional political enemies. However, the heart of the Common Core battle is not simply about whether to implement it, but about the proper role of public education in American life. There is no doubt that defending intellectual freedom, promoting diversity, and collaborating with teachers is important. However, librarians will be able to do none of those things without a



robust system of public education. Rather than either defending or attacking the content of Common Core, librarians need to reconsider their roles in the context of current challenges and threats to public education. While we fight conservative attacks on literature and curricula, there are also several points at which concerns about Common Core, particularly its threats to privacy, bridge political boundaries. No response to anti-Common Core activism should proceed without a careful examination of where the critique is coming from and its overall social and political context.

### History and Background

The stated purpose of Common Core was to prod schools to greater heights of student achievement. Responding to complaints that contemporary students lack adequate preparation for college and the workplace, supporters of a “common core” of educational standards believed uniform expectations would help states improve student performance. As the Common Core Initiative states, “high standards that are consistent across states provide teachers, parents, and students with a set of clear expectations to ensure that all students have the skills and knowledge necessary to succeed in college, career, and life upon graduation from high school, regardless of where they live.”<sup>4</sup> By conforming to uniform measures of college readiness, the authors of the Common Core Initiative believed that it would help states eliminate disparate outcomes and streamline academic expectations from state to state. In addition, the authors argued that consistent standards across state lines would make teacher training and compiling student data more efficient. They believed Common Core would encourage collaboration between states on assessments and curricula, and provide clearer guidelines for teacher education curricula.<sup>5</sup>

The federal government is barred by law and by custom from determining state and local school curricula. Thus Common Core had to be the result of a state-led effort in order to be legitimate. In some ways, this was the case: the NGA and the CCSSO are not federal agencies. These organizations are composed of elected state officials who are supposed to directly represent their states’ constituencies. Yet after the NGA and the CCSSO recommended creating Common Core, their representatives had little input into Common Core content. Rather, “experts” from private testing corporations and educational technology companies were responsible for the bulk of Common Core content.<sup>6</sup> In addition, funding of Common Core was underwritten in large measure by the Bill

Gates Foundation, which donated money to the federal Department of Education earmarked for that purpose.<sup>7</sup>

Common Core’s legitimacy also depended on the states voluntarily adopting common standards. As individual states adopted Common Core, it was hoped they would maintain consistency between one another without ceding control over public education to the federal government. However, once Common Core was finished, the Department of Education pushed states to adopt it by offering economic incentives. To compete for funding from Race to the Top, a program created by the Obama administration, states were required to adopt Common Core (or state standards congruent with Common Core) if they wished to remain in the running.<sup>8</sup>

With such incentives on offer, it is not surprising that all but five states initially agreed to adopt Common Core. Alaska, Nebraska, Texas, and Virginia rejected both the ELA and the math standards, while Minnesota rejected only the math standards. The other forty-five states adopted Common Core, some of them (like Kentucky) even before they were publicly released.<sup>9</sup> After the contents were made available, some states claimed they would not have adopted them had they known what Common Core required. Meanwhile, activists urged their representatives to push state legislation that would either reject Common Core entirely, or delay or defund its implementation.<sup>10</sup> While Indiana, Oklahoma, and South Carolina successfully voted to roll back Common Core, others, like Mississippi and New York, opted simply to review or delay Common Core implementation and assessment. Such “softer” legislation is becoming more common after the defeat of anti-Common Core bills in Arizona, West Virginia, and South Dakota, with states becoming more likely to “take a second look at their standards than to get rid of what they have.”<sup>11</sup>

With so many attacks on the Common Core in the news, it can be easy to overlook the arguments in favor of Common Core. Supporters usually argue that the standards promote educational equity. Without uniform standards from state to state, they argue, some students will be shortchanged in their preparation for college and the workforce.<sup>12</sup> When critics complain that this uniformity will tie the hands of teachers, Common Core defenders are quick to make a distinction between standards and curricula. Standards, they argue, are goals and expectations rather than instructions: “Teachers know best about what works in the classroom. That is why these standards establish what students need to learn, but do not dictate how teachers should teach.”<sup>13</sup> This freedom to interpret the Common Core may be overstated, however, given



that regular assessments will determine, to some degree, what is covered in classrooms. The role, for example, of the lists of “exemplar texts” in the appendices of the ELA standards remains unclear. While Common Core defenders point out that these books are not required, but merely a sample of the kinds of books that fulfill ELA standards, critics insist that the lists will play a determinative role when testing comes into play.

As for which organizations support Common Core, this too has a complex answer, because some of the groups that initially welcomed Common Core are now having second thoughts. Teachers’ unions and professional organizations are key examples of the continually shifting public assessment of Common Core. While the AFT (American Federation of Teachers) continues to be listed on the Common Core website amongst the supporters of the standards, AFT president Randi Weingarten predicted that implementing Common Core was likely to be “worse than [the implementation of] Obama Care.”<sup>14</sup> In addition, the CTU (Chicago Teachers’ Union) has come out against the standards.<sup>15</sup> As for professional organizations, they tend to hedge their bets, and thus their support for Common Core ranges from lukewarm to nonexistent. For instance, the NCTE (National Council of Teachers of English) supports Common Core only the degree that they support rather than impede teacher autonomy in the classroom.<sup>16</sup>

Unsurprisingly, educational technology and testing companies are strongly in favor of Common Core; in fact, recent trade journal articles cite Common Core as a harbinger of an economic “boom” (and boon) to the educational technology and testing industries.<sup>17</sup> Prominent politicians from both parties, like Jeb Bush and Hillary Clinton, support Common Core, but far-right Republicans like Ted Cruz generally oppose Common Core. It is clear that Common Core is increasingly becoming a wedge issue between ultra-conservative Tea Partiers and more mainstream Republicans.<sup>18</sup> The data sets that will be generated from Common Core assessments appeal to corporate interests, who see this



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information as a useful adjunct to their growth and development.<sup>19</sup>

At the risk of over-simplification, the supporters and defenders of Common Core tend to fall into line behind their position on the testing and assessment status quo post-No Child Left Behind. Those who are invested in the current testing regime believe that Common Core will help public education work to its fullest potential. These supporters tend to be invested in testing and standards as a way to achieve higher student performance and/or see educational standards as a growth industry through which they may profit. Yet critics of Common Core, whether on the left or the right, tend to see public education as fundamentally flawed and in need of reform, though they disagree on what the alternatives should look like. A closer look reveals that conservative anti-Common Core activists take an adversarial stance toward public education and academic free-

dom, while their progressive counterparts champion full funding of public education as the key to participating in democratic life. Though their goals are diverse, different conservative constituencies oppose Common Core within the context of a larger conservative assault on public education. Conversely, progressive educators and their allies attack Common Core because they want to protect and expand public education, not dismantle it.

### Conservative vs. Progressive Critiques of Common Core

Many anti-Common Core activists embrace elements of both social and economic conservatism. Indeed, since the 1960s, social and economic conservatives have often managed to set aside their differences and fight together for shared causes like backing Republican candidates for public office.<sup>20</sup> However, from 2009 on, the upstart Tea Party movement has proven that this union of social and economic conservatives can succeed in pushing the Republican Party even further to the right.<sup>21</sup> Common Core has proven effective in mobilizing different Tea Party constituencies and uniting them behind an explicitly economic *and* social conservative agenda for public education.



Anti-Common Core activism can be divided into two general categories: objections to the structure, form, or process of Common Core and its implementation, and objections to the content of the standards themselves. Objections to the structure, form, or process of Common Core are usually part of larger conservative protests against federal involvement in public education. Some protesters go several steps further to accuse the Obama administration of a Common Core-fueled conspiracy to take over public schools.<sup>22</sup> Conservative anti-Common Core activists object to federal influence because they believe local control of schools will give parents and community members a way to make sure their values are reflected in local schools. In contrast, progressives believe local control will allow teacher autonomy and better resource allocation to disadvantaged schools. Meanwhile, many on both sides object to the process of creating and adopting the standards, believing the role of the federal Department of Education to have been coercive and illegitimate.

Objections to the content of Common Core itself are usually heirs to previous (and continuing) culture wars between the left and the right over race, gender, and sexuality. The ELA standards draw the most fire because both the “Exemplar Texts” and the 50 percent “informational texts” requirement offer specific content that fuels curricular challenges. Activists charge individual books and the Exemplar List list itself with immorality, pornography, anti-religious sentiment, being *too* multicultural, and leaving important classics out.<sup>23</sup> As for the emphasis on informational reading, conservative activists believe it shortchanges classic literature,<sup>24</sup> panders to teenaged readers, and can be more easily manipulated to indoctrinate students in left-wing viewpoints.<sup>25</sup> Some progressives also object to Common Core content, along with parents with allegiances to neither political camp find Common Core-related curricula to be uninspired or insufficient.<sup>26</sup>

While others would not go that far, many object to the “one size fits all” approach of a common standards base regardless of ideology. However, conservative anti-Common Core activists object to federal influence because they believe local control of schools offers better accountability to parents and community members. In contrast, progressives believe local control will allow teacher autonomy and better resource allocation to disadvantaged schools.

It is most useful to see the social conservatives, sometimes referred to as either the religious right or “pro family” activists, as a subset and an ally of the Tea Party, which purports to focus solely on economic issues.

The Tea Party’s main critique of Common Core is that it amounts to federal overreach into educational decisions that should be the province of states and individual school districts.<sup>27</sup> The conservative religious activists within the Tea Party would agree, but add to this argument their objections about the contents of the standards themselves. Whether affiliated with the Tea Party or not, social conservatives attack Common Core as being insufficiently rigorous, a type of liberal or socialist indoctrination that contains immoral, even pornographic literature recommendations.<sup>28</sup> Thus both types of conservatives object to the *process*, but social conservatives also object to the *content* of Common Core. However, Tea Party activists who are primarily economic conservatives are quite willing to accommodate critiques of Common Core content in the service of their attack on public education.

Progressives and left-wing educators and activists often share conservatives’ concerns about the *process* of Common Core, albeit for different reasons. Some of them also object to the *content* of Common Core, but they are concerned with diversity and pedagogical issues rather than morality. Yet the main focus of their activism are the educational outcomes of Common Core, which they believe contribute to a broader, systemic attack on public education. Progressives argue that Common Core will not only result in excessive standardized testing, but that such testing will be used to further marginalize, defund, and even close schools that lack sufficient resources.<sup>29</sup> In the context of schools struggling to meet the basic educational needs of their students, a new testing regime that relies on electronic submissions and records databases will prove difficult if not impossible for such schools to maintain. In contrast to their conservative counterparts, anti-Common Core progressives are concerned with promoting equal access to public education, protecting intellectual and academic freedom, and celebrating diversity and multiculturalism.

### Common Ground Against Common Core

Despite radical differences in their worldviews, conservatives and progressives are united on several critiques of Common Core. The first is that the Common Core threatens local autonomy and control over school curricula. The second is that Common Core will lead to excessive testing and the invasion of student and family privacy. The third is that Common Core costs too much money and will squander valuable resources. However, conservatives are more likely to launch these critiques because they want to promote parental and private control



of public education. Progressives launch them because they want to make public education more inclusive and equitable, and to protect the professional autonomy of teachers.

Both conservatives and progressives object to the costs of implementing and sustaining Common Core. Among the costs associated with Common Core are replacing textbooks and teaching materials, re-training teachers, and upgrading bandwidth or purchasing additional computers in order to comply with computerized testing requirements. The Common Core will also involve considerable ongoing operational costs, which the Common Core authors neglected to factor into their analysis.<sup>30</sup> Each side believes that Common Core will cost too much money, but for different reasons. Conservatives want to eliminate wasteful government programs and lower taxes, while progressives believe Common Core levies a harsh financial burden onto the schools that can least afford it.

Progressive educators and their allies believe that the CCSS will be too unwieldy and costly for disadvantaged schools to manage. The result will be further draining of resources from the schools that most need them, making free public education for every student a more and more remote possibility. For progressives, Common Core implementation (particularly the infrastructure necessary to accommodate the mandatory electronic assessments) will demand more funding and disproportionately hurt struggling schools, who have more pressing needs for those resources. Thus the schools who are least equipped to shoulder costs will suffer the most, and money that could have been used on more substantial improvements and infrastructure will be thrown away.<sup>31</sup>

Conservatives agree that Common Core is a waste of money, but they also believe public education itself is a waste of money. They would rather redirect resources from public schools to charter schools, institute vouchers to use public funds for private education, and dismantle or at least weaken teachers' unions, which they believe defend teachers' interests at the expense of students'.<sup>32</sup> In fact, the school choice movement accompanies wider attacks on the public sector, particularly in its mistrust of professional educators, who are variously characterized as either remote elites or as lazy workers who don't deserve their publicly subsidized pensions.<sup>33</sup>

Economic conservatives see private markets in education as a way for the best schools prove their mettle by



TELLINGLY, SOME CRITICS REFER TO COMMON CORE AS "OBAMA CORE."

attracting more parents and offering families more choices. They argue that Common Core eliminates healthy competition between schools, thereby narrowing the educational consumer market for parents. As a result, conservative critics argue that the overall quality of education will suffer because schools will have no incentive to improve themselves. Anything that seems to eliminate competition is seen as a

threat to the quality of education; competition between schools is believed to be good for student outcomes and academic rigor.<sup>34</sup> Social conservatives, on the other hand, are more likely to see sinister aims in Common Core itself. They believe Common Core is being used as a bludgeon against local and parental control of curricula in order to promote liberal agendas to unsuspecting youth.<sup>35</sup>

Rejecting the claim that Common Core is a state-driven enterprise, conservative critics accuse the Obama administration of using Common Core to achieve federal control over public education. They believe that the federal government subverted Constitutional restrictions and worked around the rules to establish what amounts to a national curriculum.<sup>36</sup> Tellingly, some critics refer to Common Core as "Obama Core," a moniker no doubt intended as a reference to the Affordable Care Act's nickname, "Obama Care," also much maligned by the right.<sup>78</sup> In addition, social conservatives see the Obama Administration (and even the mainstream Republican party) as antithetical to their values and hostile to religion, while economic conservatives argue that federal programs perpetuate mediocrity and waste taxpayers' money.

Meanwhile, progressive critics are more concerned about private corporate interests in Common Core than they are in federal involvement. Because the authors of Common Core were mostly representatives from educational testing corporations, progressive critics argue that Common Core cannot possibly be legitimate, given that these same corporations will directly profit from them.<sup>38</sup> They will be able to create textbooks, digital media, and other teaching materials that align with the Common Core they created, as well as being able to market their help in managing assessment data. Conservative critics are also critical of corporate profit, but mainly because they see the testing and technology industries as pawns of the federal government. As Phyllis Schlafly asserts, "of course, tests are important to measure performance. But Common Core tests are a big



money-making industry and are used by the Obama administration to control the content of curriculum.”<sup>39</sup>

In sum, economic conservatives resist free public education because they see it as inefficient and incapable of excellence; social conservatives attack it as liberal indoctrination tool. Both would just as soon reject the system.

### The ELA and the Politics of Reading

Though criticisms of the math standards are not insignificant, the vast majority of conservative anti-Common Core activism targets the ELA standards. Perhaps this is because literary study has a more explicit ideological component: what we read and why we read it raise central questions of educational policy. The focus on the ELA standards may also be because literary study is linked with strong beliefs about reading, what it does to children, and why it plays a central role in education. While both conservatives and progressives believe that reading promotes particular values, they disagree on which values should be imparted to students and young readers. In addition, conservative critics tend to see books as pedagogical instruments, vehicles that directly transport ideas from author to reader in order to accomplish an educational task. They believe that we can predict the effects of reading on young readers, and that teachers and parents can influence youth behavior by controlling their reading.<sup>40</sup>

The ongoing battle over the literary canon—or what “classics” should be assigned in schools and recommended to young readers—heats up when cultural values come into conflict with one another.<sup>41</sup> Conservative attacks on the Common Core stem from a more general theory of cultural decline, a decline variously blamed on liberal activists, an increasingly permissive and coarse culture, attacks on the “traditional” family, and the rejection of merit in favor of diversity.<sup>42</sup> Citing the 1960s as the beginning of a steady downturn in the quality of education, conservative activists attack the CCSS as both a symbol and an indicator of this decline, citing “the assignment of easier, shorter, and contemporary texts—often in the name of multiculturalism” as a factor in the downward slide of American education.<sup>43</sup>

In the case of Common Core, though no books are explicitly required, the lists of “Exemplar Texts” have drawn criticism from conservatives. They focus most of their ire on relatively recent additions to the literary canon such as Toni Morrison’s *The Bluest Eye* and Cristina García’s *Dreaming in Cuban*.<sup>44</sup> Conservative activists believe the inclusion of these titles sacrifices literary quality and morality for a misguided attempt at diversity and inclusion. Their protests draw momentum

and resources from other conservative activist campaigns against award-winning literature, multiculturalism, “liberal” or secular values, and pornography.

Award-winning literature is more often challenged because critics believe awards to be “stamps of approval” certifying their content as unobjectionable and safe.<sup>45</sup> Like the Newbery and Caldecott Medal winners, Common Core books labeled “exemplary” become targets of censorship because they do not meet an implied standard of unimpeachable excellence. Even those who object to Common Core respect its role as a creator and maintainer of the literary canon. This canon, they believe, should be uncontroversial and free of objectionable content. Assigned literature should also be “educational,” which for some implies a moral imperative or didactic purpose for reading it. Thus, for conservative critics of Common Core, objectionable content becomes even *more* objectionable when it is labeled “exemplary” and intended for educational purposes.

Battles over the literary canon are about politics as much (or even more) than they are about aesthetic quality, but charging assigned texts with being of inferior quality can shield more obviously political (and less publicly palatable) objections to multicultural literature. When librarians and educators attempt to counter such challenges with evidence of the literary quality of a work, critics may attack the standards for judging that quality to be worthless, unimportant, biased, or even deliberately misleading. These attacks are rooted in racism and sexism, but also in models of reading that understand books as instruments that get particular educational jobs done. If an assigned book is controversial, then why not substitute a book without objectionable content that fulfills the same educational objective?<sup>46</sup> Challenges to contemporary multicultural literature also occur because critics see it as taking up curricular space better occupied by the “time-tested classics”—classics invariably (and not coincidentally) authored by white men.<sup>47</sup>

This backlash against multiculturalism draws from older conservative battles over so-called “cultural literacy” and pornography. During the late 1980s, public intellectuals such as E. D. Hirsch and Allan Bloom bemoaned the loss of young Americans’ cultural literacy—a loss they blamed on the abandonment of the “traditional” canon in favor of women writers, contemporary writers and writers of color.<sup>48</sup> They branded the educational trend toward multiculturalism as a faddish, “politically correct” movement that besmirched the quality of American education with leftist politics. For



them, as for contemporary conservative activists, openness and diversity automatically equaled lower quality.<sup>49</sup>

Today's conservatives compound these charges of multicultural mediocrity with the charge of "pornography." Such accusations were common in the pro-family movement of the 1990s and the 2000s. Pro family activists used the term to oppose sexually explicit material in schools and libraries, but also to attack GLBTQ materials they believed to be unsuitable for youth.<sup>50</sup> Branding multicultural literature as "pornographic" certainly casts its literary merit into question. It also ties anti-Common Core activism more directly to larger campaigns that marshal anti-pornography forces against public and school library policies that protect intellectual freedom.

Conservative critics not only attack multicultural literature, but also argue that Common Core does not emphasize enough literature in the first place. They take issue with the "informational reading" component of the ELA standards, which designates 50 percent of curricular reading to be nonfiction from "content-rich" areas.<sup>51</sup> Defenders of the informational reading requirement argue that students must read and master such texts in order to prepare for college and the workforce. Common Core authors also submit that this 50 percent applies to readings across all subject areas, not simply English.<sup>52</sup> However, critics point out that not all subject areas are going to be assessed; only English and language arts will be tested, so only English teachers will be responsible for this content. Thus, English teachers would be responsible for subjects they were not trained to teach, and instruction and evaluation would likely suffer.<sup>53</sup>

Meanwhile, with valuable curricular space given over to informational reading instead of classic literature, conservative critics argue that students' ability to analyze literature and understand literary references will decline. They believe less literary study will stunt student analytic ability, make them lack cultural reference points, and diminish their English language proficiency. The absence of a cursive writing requirement in the elementary grades is sometimes cited as another harbinger of educational decline.<sup>54</sup>

Conservatives also see informational reading as a tool of liberal propaganda, believing the selection of nonfiction content to be more vulnerable to ideological manipulation. Such vulnerability takes on a more ominous connotation if one believes Common Core is an instrument of federal control. This attack on biased "information" represents an interesting shift from the conservative textbook protests of the 1980s, particularly the hubbub over the Impressions series. Impressions textbooks were anthologies of selected stories, poems, and

literary nonfiction that activists believed were part of a "secular humanist" or anti-Christian agenda. The stories, they believed, consisted of propaganda rather than fact. They accused the series of promoting non-traditional gender roles, New Age spirituality, contingent value judgments, and criticism and questioning of the United States. Activists believed Impressions' fictional and fanciful qualities encouraged a liberal slant on the facts.<sup>55</sup>

For contemporary anti-Common Core activists, it is nonfiction reading that is more open to manipulation, and fiction (or at least, classic fiction) that is free from ideology. They object to topics like evolution and climate being presented as factual rather than as controversial, which they believe will confuse students at best and indoctrinate them into liberal viewpoints at worst.<sup>56</sup> Critics also object to including topics that are deemed relevant to students' lives. They believe teachers will pander to teenagers, selecting topics that are either not complex or serious enough, or too political. Citing suggested topics for informational reading that include "computer geeks, fast food, teenage marketing, and the working poor," activists argue that they are insufficiently complex to provoke analysis.<sup>57</sup> Such critiques reveal their own ideological bias as well as posit that topics of interest to teenagers could not possibly be complex or worthy of curricular time.

In addition to assuming student naiveté, many conservatives also seem to believe that teachers are not intelligent or savvy enough to detect Common Core biases, thus becoming victims of federal government manipulation. Educators are variously characterized as either dupes or as liberal elites with no regard for parental rights and community values. Such characterizations are congruent with earlier challenges to public schools and libraries. During the 1990s and 2000s, conservative library activists such as Family Friendly Libraries and the American Family Association argued that their public institutions had been taken over by professionals who marched to the orders of "private" organizations such as the ALA and teachers' unions. Activists were exhorted to "take back" their libraries and schools from elites, liberals, and private interests, thereby remaking the public in their own image.<sup>58</sup>

While battles over curricular content are obvious threats to intellectual freedom, challenges to pedagogies or teaching methodologies have been more likely to fly under the radar. However, it is here that the goals of conservative activists clash most glaringly with the aims of progressive educators. Conservative critics of Common Core distinguish between what they call "explicit instruction" or "direct instruction" with "reform instruction." Reform instruction serves as an



umbrella term for any pedagogy believed to be inferior or politically motivated, including constructivism, inquiry-based education, and “minimal guidance” approaches to education. Critics believe encouraging students to ask questions and brainstorm answers outside of the confines of accepted knowledge robs them of a solid problem-solving foundation. Teaching “basic skills” versus critical thinking is part of an ongoing debate in American education, as least as far as conservatives are concerned. Most teachers of reading, for example, favor a combination of direct instruction and inquiry-based pedagogies, but conservative activists believe these methods to be opposed to one another.<sup>59</sup> This is partially a result of conservative discomfort with the company that inquiry-based pedagogies keep. They believe “opening up” the curriculum lets in all manner of undesirable subject matter, such as multiculturalism and homosexuality, leading to student indoctrination in the name of tolerance.<sup>60</sup>

Challenges to multicultural literature often target the pedagogies and educational philosophies that underpin how books are selected and how they are taught. During the late 1980s and early 1990s, conservative critics argued that opening the literary canon to underrepresented voices constituted a lack of respect for timeless values. Later, pro family groups reclaimed values like “intellectual freedom” and “tolerance” for their own agendas, arguing that the inclusion of GLBTQ materials in libraries and schools constituted an assault on religious freedom.<sup>61</sup> Anti-Common Core activism takes its cue from both of these earlier battles. Not only does it cast pedagogies emphasizing tolerance and inclusion as not rigorous, but it also characterizes them as ideological attacks on “true” tolerance of conservative viewpoints and religious beliefs. Critical thinking is a concept that remains up for grabs. Common Core defenders believe the standards do promote critical thinking, while critics object to their “empty skill sets” and characterize them as pushing propaganda rather than encouraging authentic critical thinking.

If critiques of the ELA standards have a familiar ring, it is likely because they are the heirs to older arguments about the nature of children’s education. Given that parents, teachers and even politicians have quarreled over the question of what children should read throughout American history, any standards’ content would be subject to public scrutiny and argument. In the case of anti-Common Core activism, conservatives of different stripes have joined forces to attack Common Core as the culmination of their fears in other, more long-running battles over American education. They raise serious questions

about reading with which teachers and librarians—whatever their views on Common Core—must grapple.

### Librarians, Intellectual Freedom, and Common Core

As proponents of intellectual freedom, librarians are in a bit of bind when it comes to Common Core. There is little doubt that objections to Common Core content have resulted (and will result) in more challenges to books and curricula, particularly multicultural literature. This seems to suggest that librarians should defend Common Core itself along with the challenged material(s) in question. There is also the link between Common Core criticism and conservative activists, a group that has historically been hostile to diversity in library collections (particularly GLBTQ materials, tax increases to support public libraries, and unfiltered access to the internet).<sup>62</sup> Given this past, it is tempting to see attacks on Common Core as part and parcel of similar attacks on libraries and librarianship.

In addition, school librarians have been generally embraced Common Core because it helps them to advance their curricular objectives and further promote the value of the school library.<sup>63</sup> Librarians’ professional literature suggests that libraries can meet the demand for Common Core nonfiction readings by suggesting texts and sharing bibliographies. Librarians can also help teachers navigate Common Core by promoting the school library as an information clearinghouse for better understanding the new standards. In addition, many of the pedagogical objectives of Common Core, particularly those that rely on “short research projects,” are quite congruent with the AASL’s own *Standards for the 21st-Century Learner*.<sup>64</sup> If librarians can show that Common Core need libraries in order to be fully functional, then perhaps Common Core could be a lifeline of professional salvation for school librarians, who continuously struggle to make a case for the value of their work in a time of budget crisis and austerity.

Yet in a climate increasingly hostile to public education, claiming that school libraries (and librarians) are indispensable to implementing Common Core might be seen as something of a stretch. Large urban school districts such as Los Angeles Unified School District (LAUSD) and Chicago Public Schools (CPS) cut budgetary corners by removing school librarians from the library and even closing school libraries themselves.<sup>65</sup> Clearly, no matter how congruent libraries are with the goals of Common Core and the needs of teachers, school libraries still risk being seen as “extras” in the eyes of administrators, politicians, and the general public. Even the surfeit of studies that tie the presence of strong school libraries and



MLS-degreed school librarians to better student performance on standardized tests have not stopped school districts from cutting back on support for libraries.<sup>66</sup>

Certainly, attacks on public schools have been a constant throughout succeeding incarnations of conservative activism. Historically, conservatives have targeted the content of curricula or the books on library shelves they deem offensive. In the current political era of the Tea Party, we are likely to see more attacks on public schools and libraries made in the name of smaller government, lower taxes, and fiscal responsibility. Wisconsin Governor Scott Walker's 2011 attacks on public sector collective bargaining are only one example of how a disempowered labor force can enable policies that gut public education. In any case, defending curricular content cannot be the only way that teachers and librarians promote intellectual freedom in schools. Common Core activism certainly triggers additional book challenges and censorship battles, but they are part of a larger war over American education. Librarians and the ALA must consider challenges to Common Core within the complex political landscape that shapes public education controversies. We must look at the bigger picture of educational inequality and be able to situate our work in the context of national arguments over Common Core and public education.

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# Librarians' Activities in Relation to Media Monopoly

Rory Litwin, publisher of Library Juice Press and purveyor on online education for librarians and library workers.

From the mid-1980s to the mid-2000s, there was a active subgroup of the ALA Social Responsibilities Round Table called the Alternatives in Print Task Force (later the Alternative Media Task Force) that was concerned with the influence of media conglomerates on library collections, as well as on the reading public's appetite for books and its beliefs about the world. This group (AIP for short) saw media concentration and the market-based media system as an intellectual freedom issue because it effectively limits the diversity of library collections insofar as those collections are shaped by the industry's marketing efforts and publishing choices. AIP was a manifestation of a broader discourse about media monopoly that has since faded to some extent. The conversation about media monopoly has faded because of the rise of the internet's potential to provide outlets for a greater diversity of voices and changes in the publishing industry that have lowered the barriers to entry faced by small, independent publishing houses and self-published authors. Despite these positive changes, however, library collections still reflect mass-market publishing, and the broader economic changes that affected the publishing industry have continued apace. Mass-market publishing is still controlled by a small number of conglomerates with a fiduciary responsibility to shareholders that makes profits paramount. In an industry with small profit margins, the effect has been a steady reliance on blockbusters and an endemic shyness about publishing books that challenge the overall system.

Proponents of media diversity who are informed by an awareness of the limits of the free market as a means of distributing texts have mostly been concerned with the obstacles faced by those wanting to promote progressive and radical views, especially views that challenge capitalism. Self-published books about golfing techniques or amateur attempts at genre fiction have been less of a concern, though the theory may still be said to apply. In terms of the ideal of free access to a range of ideas to inform a democratic society, obstacles that limit access to ideas farther from the political

center are a legitimate concern because they artificially circumscribe democratic discourse. Analysis of this problem in works published in the '80s and '90s was quite sophisticated. Among the touchstone works were Ben Bagdikian's *Media Monopoly*, Edward S. Herman and Noam Chomsky's *Manufacturing Consent*, and works by Robert McChesney. These works were informed and inspired by Upton Sinclair's 1919 book about capitalism and newspaper publishing, *The Brass Check*.

Attention to these issues has been given in works that focus on the library context as well. These include 1982's



*Alternative Materials in Libraries*, edited by James P. Danky and Elliott Shore, and 1996's *Alternative Literature: A Practical Guide for Librarians*, by Chris Atton. Additionally, two reference sources focused on alternative publishers and alternative periodicals, respectively. Under the auspices of AIP, Byron Anderson compiled *Alternative Publishers of Books in North America (APBNA)*. After its sixth biannual edition it became a web resource in the late 2000s. The Alternative Press Center published two editions of *Annotations: A Guide to the Independent, Critical Press*. Both resources were published with prefaces and introductions by notable thinkers in the field of media diversity and the alternative press.

The librarians involved in AIP (myself included) advocated for special attention to the alternative press in collection development activities.

We felt that this was necessary, because of the distorting influence of the market, in order to address the call of the Library Bill of Rights to “provide materials and information presenting all points of view on current and historical issues.” In the '90s, we lamented the fact that the problem of market distortion of the information life cycle was not given attention by ALA's intellectual freedom establishment. We did recruit ALA past-president Nancy Kranich to contribute the preface to the sixth edition of *APBNA*, which gives a fine summary of the problem of media consolidation (it is available on the web at the Library Juice Press website: <http://libraryjuicepress.com/apbna-preface.php>). More importantly (though probably not because of our influence), in the mid-2000s an IFC subcommittee was formed, The IFC Subcommittee on the Impact of Media Concentration on Libraries. In 2007 they released their report, “Fostering Media Diversity in Libraries: Strategies and Actions.” After the report was published, the subcommittee was dissolved. That report, which is



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available on the ALA website ([www.ala.org/offices/sites/ala.org/offices/files/content/oif/ifissues/fostering\\_media\\_dive1.pdf](http://www.ala.org/offices/sites/ala.org/offices/files/content/oif/ifissues/fostering_media_dive1.pdf)), represents significant work by the subcommittee and makes an important statement. Unfortunately, it seems to have been shelved by the IFC in the sense that it didn't lead to policy changes or advocacy efforts, and its findings have not been incorporated into updates to the *Intellectual Freedom Manual*. The report doesn't suffer from the datedness that the seminal works of the '80s and '90s do in the internet era; it addresses the contemporary context.

I want to take this opportunity to call on ALA's intellectual freedom establishment to follow up on the subcommittee's report and renew its attention to the problem of media consolidation and media diversity in libraries. For many people, intellectual freedom

and “economic liberty” (i.e., a free-market economy) seem to go hand and hand. Historically, they may have been related developments, going back to the seventeenth-century European Enlightenment. In the way that capitalism has developed, however, the market system has come to present special problems for the dissemination of ideas, partly by creating a bias in its own favor. Librarians who are attuned to this problem consider it to be a core intellectual freedom issue. There is precedent for addressing it in the library world, including at the level of the IFC. With the OIF now seeking new directions, this may be the right time to take a fresh look at the problem. Perhaps the IFC subcommittee could be reformed, or perhaps its existing report could inform new updates to the *Manual*. It is my hope that the problem of market distortions in the dissemination of ideas will be given some attention by the intellectual freedom establishment in the coming decades.



## Intellectual Privacy: Rethinking Civil Liberties in the Digital Age

Author \_ Neil Richards

Publisher \_ Oxford University Press, 2015. 240p. Cloth (also available as ebook). \$29.95.

ISBN: 9780199946143

Reviewer \_ Dr. Michael Zimmer, School of Information Studies,  
University of Wisconsin-Milwaukee

Traditionally, the context of the library brings with it specific norms of information flow regarding patron activity, including a professional commitment to patron privacy. In the library setting, a patron's intellectual activities are protected by decades of established norms and practices intended to preserve patron privacy and confidentiality, most stemming from the American Library Association's (ALA) Library Bill of Rights, which begins with the premise that everyone is entitled to freedom of access, freedom to read texts and view images, and freedom of thought and expression. The ALA has repeatedly confirmed the importance of patron privacy as a necessary ingredient in preserving intellectual freedom, and its Office for Intellectual Freedom (OIF) has been defending and advocating for privacy rights for nearly forty years. As a matter of professional ethics, most libraries protect patron privacy by engaging in limited tracking of user activities, instituting short-term data retention policies, and generally enabling the anonymous browsing of materials. These are the existing privacy norms within the library context and the cornerstone of what makes up the "librarian ethic."

However, these norms are being increasingly challenged from numerous fronts: law enforcement and government agencies continuously pressure libraries to turn over data on patron activities; new so-called Library 2.0 tools and similar internet-based services promise to improve the delivery of library services and enhance patron activities, while

simultaneously fostering the tracking, collecting, and retaining of data about patron activities; and given the dominance of social media—where individuals increasingly share personal information on platforms with porous and shifting boundaries—librarians and other information professions are confronted with possible shifts in the social norms about privacy.

It is within the context of these challenges that Neil Richards, a professor of Law at Washington University in St. Louis, has published *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age*. Writing as a law scholar, Richards' defense of intellectual privacy is largely motivated by a growing concern over the conflict between free speech and privacy: whether we can reasonably restrict the access, sharing, and publication of personal data, yet still protect the First Amendment principles of a free society. His goal, in the most basic—but also most audacious—sense, is to illuminate a new path for safeguarding civil liberties in the digital world.

The book is divided into three parts. Part 1, "The Limits of Tort Privacy," describes the tension between free speech and the right to privacy through the lens of traditional tort law. Here, Richards introduces the conflicts between privacy concerns and freedom of speech through the question, "How does one distinguish the public's right to know and the individual's right to privacy?" He explores the limits of disclosure for celebrities, ordinary people, and explicit information of a sexual nature, and how we can treat such information

disclosure without compromising the dignity of individuals. Tracing privacy law from Brandeis to the new so-called "right to be forgotten," Richards reveals how complex balancing our rights has become in our contemporary digital world.

Part 2 starts to reconcile this tension between privacy and free speech by introducing the reader to "The Promise of Intellectual Privacy," which Richards defines as the "protection from surveillance or interference when we are engaged in the process of generating ideas—thinking, reading, and speaking with confidants before our ideas are ready for public consumption."

Though freedom of thought and belief is core to intellectual privacy, and the protection of intellectual privacy is, in return, necessary for a robust culture of free expression, Richards notes how law—in its current form—remains insufficient to ensure the fullest protection of this right. In an increasingly digital information environment, where our searches are logged, our reading habits monitored, our browsing is tracked, and every click of the mouse is captured, current legal frameworks for protecting intellectual privacy are rapidly being destabilized.

Part 3, "Information Policy and Civil Liberties," proposes a path forward, describing means for both the promotion of freedom of speech and the protection of intellectual privacy in the midst of an increasingly digital and personalized world. Richards suggests numerous steps that must be taken to bolster intellectual privacy,



including embracing the existing Fair Information Practice Principles (FIPPs) which attempt to limit how personal information is collected and used, recognizing how intellectual data (our reading habits, search histories, and the like) are just as sensitive as personally-identifiable information period. Richards also suggests rejecting the notion that privacy is merely a binary condition (either a piece of information is private, or it is not), and instead embracing a more fluid and contextual approach to recognizing

the “intermediate states” between fully public and fully private.

At the heart of Richards’ important book is a cautious—but vital—balance of privacy and freedom of speech. He states,

My argument about freedom of thought in the digital age is this: Any technology that we use in our thinking implicates our intellectual privacy, and if we want to preserve our ability to think fearlessly, free of monitoring, interference,

or repercussion, we should ensure these technologies with a meaningful measure of intellectual privacy.

The book’s primary argument, that intellectual privacy is vital to a robust culture of free expression as it safeguards the integrity of our intellectual activities by shielding them from the unwanted gaze or interference of others, should resonate well for all librarians and defenders of intellectual freedom and privacy.

## Ctrl+Z: The Right to Be Forgotten

**Author** \_ Meg Leta Jones

**Publisher** \_ New York University Press, 2016. 253p. Cloth (also available as ebook). \$29.95.

ISBN: 978-1-4798-8170-3

**Reviewer** \_ Clem Guthro, Colby College

Meg Leta Jones’ book joins a number of other recent books on the right to be forgotten (R. Fellner, *The Right to Be Forgotten in the European Human Rights Regime*, 2014; A. Ghezzi et al., *The Ethics of Memory in a Digital Age: Interrogating the Right to be Forgotten*, 2014; and J. A. Serralbo, *The Right to Oblivion*, 2013). Jones attempts to make the right to be forgotten understandable to a broad audience, specifically to those with a US perspective. She shows the fundamentally different approaches to personal information between Europe and the United States and lays out how those differences inform the actions of the European Union in advancing the right to be forgotten. The right to be forgotten grows out of the cultural and legal tradition of Europe and is predominantly instantiated in the European Union Data Protection Directive (EUDPP). While written in lay language, it does require close reading to grasp some of the finer points of the EUDPP.

Jones advances the idea of “digital redemption” as a way of thinking about transforming “digital public information into private information upon the subject’s request.” She ties this to the idea of forgiveness and its psychological and social value, noting that the discoverability of outdated, inaccurate or harmful information prohibits forgetting by the individual or society. The right to be forgotten can be seen as an avenue for digital redemption and reinvention.

Using a comparative approach Jones closely examines Europe’s long history of privacy regulation and compares it to the equally long but different view of privacy that has evolved in the United States. Jones situates the right to be forgotten predominantly in the context of the continental European tradition of individual personality rights, most clearly expressed in German, Swiss, and French law. She notes that the predominant difference between European and American information policy is the default for sharing. The United

States generally permits the collection and transfer of personal information with an opt-out model while the European model uses a comprehensive regime that protects personal information with the default of not sharing. This fundamental difference as well as the strong European tradition of dignity, honor, and the right to a private life supports the idea of the right to be forgotten. Elements of a “digital right to be forgotten” is instantiated in the EUDPP but it is not sufficiently well developed; a “data controller” (e.g., Google) would not have clear and unambiguous guidance on legally responding to a right to be forgotten request.

While the internet is not a library designed for long-term preservation of all its information, the complexity of the internet has also made forgetting impossible. Within the US context, Jones argues that the legal culture and large weight of freedom of expression inhibits serious conversation and possible solutions. Arguments for the integrity of the



historical record, protection of information that is deemed newsworthy or that the public has the right to know, often overrules serious discussion or consideration of digital redemption. She notes that digital forgetting is attempting to address information that is now outdated, irrelevant, or inaccurate but because of the inability to remove it from the internet, it haunts individuals and causes harm.

Jones argues that the issues raised by right to be forgotten are strictly not privacy issues because the information in question was properly disclosed at the time but have become problematic over time. While this seems overly simplistic as an overall stance, most of the cases Jones cites do stem from information that was originally collected in a legal and ethical manner but became problematic over time through a change in circumstance, or through use and reuse. She sees the right to be forgotten as an attempt to address real or perceived threats of information being collected, leaked, shared, and analyzed in ways that threaten identity, reputation, authority, and privacy.

Recognition of the impermanence of digital information, according to Jones, allows a reframing that can be helpful in thinking about digital redemption. In the end she sees the world dividing into preservationists,

those that believe everything on the internet should be preserved, and deletionists, those who believe that some information should be deleted. Both perspectives are part of information stewardship, and decisions on what to maintain and what can and should be deleted are made in ways that may or may not be helpful.

Ideas of digital redemption and the right to be forgotten are clearly situated within the legal cultures of the world and cannot and should not be approached as if a harmonized approach is possible. While the right to be forgotten is clearly situated within the EU's focus on personal privacy as a fundamental right, she argues that the United States should find ways to address the need for digital redemption. While US protection of freedom of speech makes an overall legal approach difficult, Jones argues for allowing decreased discoverability, offering anonymity, limiting the use of personal information, and adding information to provide context and accuracy.

Jones delineates the global stakes in the right to be forgotten and the need to work in an interoperable approach between and among legal jurisdictions, data controllers and data providers. There will undoubtedly be conflicts between the EU law and US law over right to be forgotten requests

and in how data imported between countries is handled, especially if it contains personal data. Google, because of EU directives, has developed some formal guidelines on how it will comply with right to be forgotten requests. Jones argues, however, that guidelines are best done at the national legislative and regulatory level and not at the data controller level.

Jones makes only oblique references to libraries in the ideas of "information stewardship" but does give a more material nod to the archival community and likens the right to be forgotten requests to be somewhat analogous to the work of the archival community in how they deal with sensitive materials in their archives where material is often restricted and perhaps at times expunged to protect those who are still alive.

This book is appropriate for librarians, information professionals, lawyers, and policy makers concerned with managing information access, stewardship, and privacy. Anyone intrigued with the right to be forgotten or who wrestles with wanting to erase part of their digital past will find this book informative and useful. It could also be used in library and information science programs for courses on information policy.

## Where Are All the Librarians of Color? The Experiences of People of Color in Academia

**Editors** \_ Rebecca Hankins and Miguel Juárez

**Publisher** \_ Library Juice Press, 2015. 341 pp. Paper. \$45.00. ISBN 978-1-936117-83-3

**Reviewer** \_ Martin Garnar, Dean, Kraemer Family Library,  
University of Colorado Colorado Springs

In the very first paragraph of the introduction to this important volume, the editors felt the need to justify the existence of this book, as they were

told that there were many articles and books on the topic of diversity in the library profession and that another book did not seem necessary.

They reasoned that if there are many books on information literacy and digitization in librarianship, why not have more books on diversity? In



reality, they could have pointed to the fact that a search of WorldCat finds roughly ten books on the topic in the last forty years, and very few of those focus on the firsthand experiences of librarians of color. Even the more numerous articles show the limited variety of scholarship in this area, as many of the same titles are cited over and over by the chapters within the book. The title reflects the profession's frustration with virtually no change in the proportion of librarians of color since the creation of high-profile programs like the ALA Spectrum Scholarships, and the book's three sections not only cover recruitment of students of color into library and information science programs, but look at the issues that have kept the numbers low when compared to the demographics of the general population.

In the first section, "Setting the Stage for Diversity in the Profession," the various chapters look at some of the factors related to attracting and keeping people of color in the academic library profession. The availability of scholarships is not, by itself, enough to increase the number of students of color in LIS programs, and the first chapter examines Discovering Librarianship, a recruitment program sponsored by the ALA Office for Diversity that asks librarians of color to tell their stories and help convince potential students to consider the profession as a viable option. Another chapter examines the importance of building a professional network, reviewing options for professional associations outside of ALA that focus on specific ethnicities, and advising librarians on how to make connections outside of the library as well as across institutions, acknowledging the reality that many librarians of color may be the only diverse person not only in the library, but also in the larger campus community. Mentoring programs

are discussed in a few places within the first section as a crucial aspect of the overall retention plan. A promising study of the impact of mentoring programs for newer librarians of color reveals that the primary result is a greater loyalty to the institution rather than the profession in general. However, as acknowledged by the authors, the study asked librarians to predict whether they would be likely to remain at their institution or in the profession, but does not provide any longitudinal data on the actual effect of mentoring on retention. Another chapter briefly reviews the history of diversity resident programs before looking at the importance of terminology when referring to residents, as those who found themselves being called interns had a very different experience in these programs designed to give new librarians of color a first professional position and possible pathways for continued employment at the host institution.

The editors write that the second section of the book, "How Diversity Benefits the Profession," is designed to demonstrate that "diversity promotes excellence" using essays that give examples in support of the statement, but more often highlight how the profession has failed to take advantage of what librarians of color have to offer. Compared to the other sections of the book, this section has less conceptual coherence. The opening and closing chapters have a more theoretical approach to the failures of historical and current diversity efforts, while the middle chapters seem better suited for the book's third section of personal stories. Despite the organizational disconnect, the individual chapters are worthwhile. On the theoretical side, Shaundra Walker's application of critical race theory to the question of diversity in librarianship exposes the structural racism inherent in the LIS

educational system and in the appointment, tenure, and promotion process. Walker also provides a counterstory of her own negative experiences to balance the positive narratives that tend to get promoted when reporting on diversity efforts. Meanwhile, co-editor Rebecca Hankins's essay on racial realism offers another lens for librarians of color to understand their situations and move forward in spite of the barriers that still exist. On the more personal side of this topic, Akilah Shukura Nosakhere's account of perseverance despite institutional and collegial support that is lukewarm at best highlights the importance of positivity, while Vince Lee's story of his archival career demonstrates that being an archivist (or librarian) of color does not automatically guarantee entry into or engender trust with marginalized communities.

The third section, "Personal Diversity Stories," delivers what it promises. The first two chapters share the stories of librarians at two different academic libraries, and comparing the two demonstrates the positive impact a diversity residency program can have. The third chapter, by Roland Barksdale-Hall, combines the author's own experience with the story of a mentor to demonstrate that there has been some progress, but there is still a long way to go. The final chapter does include the personal story of the author (Miguel Juárez, the other co-editor), but serves more as a conclusion for the entire book, as Juárez uses this opportunity to evaluate the current state of affairs (bleak at best) and issue a wake-up call: efforts to support diversity are not working, and changes must be made if the profession is going to live up to its commitment to welcome and affirm librarians of color.

As the library and archive profession continues to question the efficacy of recent initiatives to increase the



representation of marginalized groups within the field, this book suggests that major changes are needed in the profession's approach to live out its commitment to diversity and inclusion, as the evidence compiled in this volume points to mixed results at best,

with some level of failure as a more likely conclusion. Juárez notes that he wishes his essay "would become happier right here and we could all hold hands across the library boardroom and sing *kumbaya*," but he is unable to get past the realities of

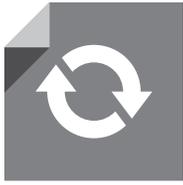
micro-aggressions and the barriers they pose for librarians of color. This book does an excellent job of enumerating the challenges still facing librarians of color. What is needed in a future volume are more success stories, but first they must be created.

## Seeking Nominations and Applications for Editor

The ALA Office for Intellectual Freedom seeks an Editor for the *Journal of Intellectual Freedom and Privacy*, a quarterly journal dedicated to both professional discourse and current news about intellectual freedom and privacy issues in libraries. The Editor will be responsible for overseeing the journal's editorial content and working with its volunteer editorial board to shape the journal's direction. Responsibilities include soliciting and editing long-form submissions and book reviews, overseeing the peer review process for submitted manuscripts that require review, and working with the news editor and OIF staff to identify and develop content for the journal's censorship news and court reports sections. The position is part-time and editors are compensated on a per-issue basis.

Candidates should ideally have an advanced degree in library and information sciences, law, or humanities and a strong background and interest in intellectual freedom, privacy, and professional ethics.

Interested candidates should send letters of inquiry to Deborah Caldwell-Stone, Office for Intellectual Freedom, American Library Association, 50 East Huron Street, Chicago, Illinois, 60611. Correspondence may also be sent electronically to [dstone@ala.org](mailto:dstone@ala.org).



## FREEDOM TO READ FOUNDATION REPORT TO COUNCIL: 2016 MIDWINTER MEETING, BOSTON

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

### Litigation

#### PRIVACY AND SURVEILLANCE

One of the ongoing priorities for the Freedom to Read Foundation is the preservation of reader privacy and the right of the library user to read and inquire free from any surveillance or unwanted interference by the government. In particular, FTRF wants to ensure that library users are not chilled in their right to receive information because they fear the government's warrantless surveillance of their communications will reveal the subject matter of their inquiries.

Past history has taught us that individuals will avoid accessing controversial, unorthodox, or sensitive material they have a constitutional right to read if they believe the government is monitoring their reading habits.

To address this priority, FTRF recently joined two different *amicus curiae* briefs to challenge the government's bulk collection of phone metadata without a warrant and to support the right of libraries to challenge warrantless surveillance on behalf of their patrons.

The *amicus* brief filed in *United States v. Moalin* argues that the government should not be permitted to engage in warrantless searches and seizures of phone metadata because that metadata reveals information about an individual's expressive and associational activities that should be protected by both the First and Fourth Amendments of the Constitution. The underlying case arose as

a criminal prosecution and involves the defendant's request for a new trial based on the government's failure to disclose that evidence used against the defendant was gathered through the National Security Agency's bulk phone metadata surveillance program without a warrant. The *amicus* brief signed by FTRF challenges existing Supreme Court precedent holding that individuals "voluntarily" provide such data to third parties like phone companies, thereby ending the user's Fourth Amendment expectation of privacy. The brief asserts that, given the realities of the digital age that require individuals to entrust their metadata and content to third party communications companies, this doctrine should be set aside and the government required to obtain a warrant whenever it seeks to access metadata that reveals information about a user's associations and expressive activities.

The *amicus* brief was prepared by the Brennan Center for Justice at New York University's School of Law. Joining FTRF on the *amicus* brief are the American Library Association, the Electronic Privacy Information Center, the National Association of Criminal Defense Lawyers, the Ninth Circuit Federal and Community Defenders and the Reporters Committee for Freedom of the Press. The case is currently pending before the Ninth Circuit Court of Appeals.

The second *amicus curiae* brief joined by FTRF asserts the importance of privacy to the unfettered exercise of First Amendment rights and argues that libraries, booksellers, and similar organizations can assert the rights of their users related to their privacy concerns associated with the government surveillance of users' reading records. The underlying lawsuit, *Wikimedia v. National Security Agency*, challenges the National

Security Agency's practice of using "upstream surveillance" to intercept international communications as they travel across the internet's backbone and was filed by the ACLU on behalf of a number of legal, educational, and human rights organizations. The government argues that these organizations have no standing to challenge the NSA's surveillance; the *amicus* brief points out that individual users are likely to avoid challenging the law for fear that the content of their communications would be revealed. Consequently, libraries, booksellers, and similar organizations can assert their users' privacy rights on the grounds that such warrantless surveillance chills communications between users and the libraries, booksellers, and organizations that serve and represent them.

The *amicus* brief was written by the Electronic Frontier Foundation. Joining FTRF on the brief are the American Booksellers Association, the American Library Association, the Association of Research Libraries and The International Federation of Library Associations. On October 23, 2015, the district court dismissed the lawsuit on the grounds that the plaintiffs failed to provide factual evidence of how NSA actually was using its program to search and seize communications; it held that the plaintiffs lacked standing because the plaintiffs' alleged injury was speculative. The plaintiffs are currently considering an appeal to the Fourth Circuit Court of Appeals.

#### CENSORSHIP

On July 7, 2015, the Ninth Circuit Court of Appeals issued the long-awaited decision in *Maya Arce, et al. v. Diane Douglas, et al* (formerly *Arce v. Huppenthal*). The lawsuit, filed by teachers and students in the Tucson Unified School District (TUSD)



against the Arizona Superintendent of Public Instruction and other state officials, challenged the constitutionality of an Arizona statute prohibiting the use of class materials or books that encourage the overthrow of the government, “promote resentment toward a race or class of people,” or “designed primarily for pupils of a particular ethnic group,” or “advocate ethnic solidarity instead of the treatment of pupils as individuals.” The plaintiffs filed the lawsuit after TUSD was forced to cease its Mexican-American Studies program and remove books from its classrooms. After the district court upheld the constitutionality of the statute, the plaintiffs appealed, asking the Ninth Circuit Court of Appeals to overturn the district court’s decision.

At the request of the plaintiffs’ legal counsel, FTRF’s legal counsel authored an *amicus curiae* brief in support of the plaintiffs’ First Amendment claims. The American Library Association, REFORMA, the Black Caucus of the ALA and the Asian/Pacific American Librarians Association all joined FTRF on the brief.

The Ninth Circuit issued a mixed opinion in the case, handing the plaintiffs both a defeat and a victory. It held that the district court’s determination concerning the constitutionality of the statute was correct, finding that, with the exception of the provision banning courses designed for students of a particular ethnic group, the statute, as written, was neither overbroad or vague in violation of the Constitution. However, it reversed the district court’s grant of summary judgment for defendants on plaintiffs’ equal protection claim and remanded that claim and the plaintiffs’ First Amendment viewpoint discrimination claim to the district court for further proceedings. FTRF continues to monitor the lawsuit and is prepared

to assist the plaintiffs as they pursue their claims before the district court.

I am extremely pleased to report that the federal district court in Arizona has entered a final decree in favor of FTRF and its fellow plaintiffs in *Antigone Books LLC, et al., v. Tom Home*, our legal challenge to the 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 the statute had the laudable goal of preventing “revenge porn,” the law, as written, threatened to make the dissemination of a large number of historic, artistic, educational, and other newsworthy images a crime punishable by fines and imprisonment, placing librarians at risk of prosecution for distributing images such as the iconic photo of “Napalm Girl” fleeing from an attack on her village during the Vietnam war. The final decree resolves all claims in the lawsuit and permanently enjoins Arizona’s state prosecutors from enforcing the law.

### Global Strong Encryption

The Freedom to Read Foundation trustees have voted to sign on to a coalition letter endorsing strong encryption for networks, digital communications, and data and urging governments to refrain from any action that would compromise the security of encrypted networks, communications, and data. The letter, circulated by the digital rights and free expression organization Access Now, has been endorsed by many other organizations, including the American Library Association, the Center for Democracy and Technology, the Electronic Frontier Foundation, and PEN International. We are pleased to join the campaign to secure the internet and preserve the right of free expression in the digital age.

### Developing Issues

Members of the Foundation’s Developing Issues committee reported on a number of issues involving threats to free expression or civil liberties. Martin Garnar led a discussion on diversity and free speech issues on campus and Doug Archer explored the potential for challenges to religious materials in libraries arising from anti-Islam and anti-Muslim sentiment and from the mistaken belief that the separation of church and state bars any discussion of religion in publicly funded agencies. Ray James reviewed access and service to diverse populations, while Baxter Andrews provided information and web resources addressing privacy and national security. Em Claire Knowles concluded the report by leading a discussion about the European Union’s “right to be forgotten” concept and its potential impact on access to information.

### The Judith F. Krug Memorial Fund

The Judith F. Krug Memorial Fund, which was created by donations made by Judith’s family, friends, colleagues, and admirers, supports 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.

In 2015, the fund continued to support two major initiatives: a grants program that underwrites Banned Books Week activities in libraries, schools, and community institutions across the country and an education initiative intended to augment and improve intellectual freedom education in LIS programs.

For this year’s Banned Books Week, the Krug Fund made grants to the Chapel Hill Public Library in North Carolina, the Kurt Vonnegut Memorial Library in Indianapolis,



Indiana, the Virginia Beach Public Library in Virginia, SA Youth (an organization that works with at-risk youth) in San Antonio, Texas, and Remembering for the Future Community Holocaust Initiative in Neptune Beach, Florida. Their initiatives included a new series of Banned Book Week trading cards, development of a curriculum addressing banned books in schools, interactive displays, and a “lock-in” with banned books. Grant recipients’ photos, videos, and written reports of their events will be available online at [www.ftrf.org/?Krug\\_BBW](http://www.ftrf.org/?Krug_BBW).

This past fall, Professor Emily Knox once again taught “Intellectual Freedom and Censorship,” under the auspices the University of Illinois Graduate School of Library and Information Science (GSLIS) and the Krug Memorial Fund. The online, graduate-level class was well-received by students and we look forward to continuing our educational partnership with GSLIS. We thank Professor Knox and FTRF education consultant Joyce Hagen-McIntosh for their thoughtful and dedicated work towards fulfilling FTRF’s goal of assuring the availability of intellectual freedom curricula and training for LIS students and professionals.

### Executive Director James LaRue

At this meeting we welcomed our new Executive Director, James LaRue. The CEO of LaRue and Associates, Jamie has had an active career in writing, speaking and consulting prior to joining FTRF. He served as the director of the Douglas County Libraries in Colorado for many years and previously worked as the Library Services Director at the Greeley, Colorado, Public Library. He has also held positions at the Lincoln Library in Illinois and Illinois

State University. He has a master’s degree in library and information science from the University of Illinois, Champaign-Urbana and a bachelor’s degree in philosophy and English from Illinois State University.

While Jamie may be new to FTRF’s and ALA’s staff roster, he has a long history of professional engagement and involvement with ALA and other professional organizations. He has served as president of the Colorado Council for Library Development and the Colorado Library Association and has most recently been active on ALA’s Digital Content Working Group. He is a member of the Library Leadership and Management Association (LLAMA) and Public Library Association (PLA), and the ALA Intellectual Freedom Round Table. He was named Colorado Librarian of the Year in 1998 and received the Julia J. Boucher Award for Intellectual Freedom from the Colorado Library Association in 2007. In 2004, he was awarded the National Council of Teachers of English/Support for the Learning and Teaching of English Intellectual Freedom Award. Among his publications is *The New Inquisition: Understanding and Managing Intellectual Freedom Challenges* (2007).

### FTRF Membership

Your membership in the Freedom to Read Foundation is needed to sustain and grow FTRF’s unique role as the defender of First Amendment rights in the library and in the wider world. I invite you to join me in supporting FTRF as a personal member, and ask that you please consider inviting your organization or your institution to join FTRF as an organizational member. 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](http://www.ftrf.org).

Respectfully submitted,  
Julius C Jefferson, Jr.  
President, Freedom to Read Foundation

### ALA INTELLECTUAL FREEDOM COMMITTEE REPORT TO COUNCIL: 2016 ALA MIDWINTER MEETING, BOSTON

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

#### Information

##### A NEW JOURNAL ON INTELLECTUAL FREEDOM: *IN LIBRIS LIBERTAS*

Since 1952, the *Newsletter on Intellectual Freedom* has been the go-to place for librarians, attorneys, and the general public to find the latest reliable news on court cases, censorship incidents, and other First Amendment news in the United States. In spring 2016, NIF will relaunch as *In Libris Libertas: A Journal of Intellectual Freedom and Privacy*.<sup>1</sup> *In Libris Libertas* will provide the same NIF news coverage, but in an expanded digital format. Included will be peer-reviewed articles, book reviews, opinion pieces, and other features. We want *In Libris Libertas* to be at the center of discourse on intellectual freedom and privacy issues in libraries.

To that end, we invite all to participate and provide ideas, reviews, and

1. Now renamed *Journal of Intellectual Freedom and Privacy*.



articles. Please contact Deborah Caldwell-Stone of the ALA Office for Intellectual Freedom ([dstone@ala.org](mailto:dstone@ala.org)) if you are interested.

**CHALLENGES TO LIBRARY MATERIALS UPDATE**

Since ALA Annual Conference in 2015, OIF has worked on many challenges to library materials. The following are a sample of some of the public cases:

***This Book is Gay* by James Dawson**  
Wasilla Public Library, Alaska

**Reason:** Homosexuality

**Complainant:** Parent

**Action:** Collaboration with Alaska Library Association's Intellectual Freedom Committee to provide support to director and city administration.

**Resolution:** Retained. Also, the young adult non-fiction collection will be interfiled with the adult non-fiction collection moving forward.

***Just One Day* by Gayle Forman**  
School District 196 in Rosemount, Minnesota

**Reason:** Parents want copies of the book removed from all the middle school and high school libraries in the district, citing adult themes such as a graphic sexual encounter, underage drinking, and date rape as reasons for the removal. Also, inappropriate language and "no life lessons."

**Complainant:** Parents of sixth-grade student

**Action:** Support of the librarians and school administration. OIF provided a letter from Barbara Jones to the reconsideration committee, defending the novel and the right to independent reading for students.

**Resolution:** Retained. Committee voted 7-4 to retain the book.

***Death and the Maiden* by Ariel Dorfman and *Cal* by Bernard MacLaverty**

Rumson-Fair Haven Regional High School, New Jersey

**Reason:** Not age appropriate

**Complainant:** Parent who started a petition against two works being used in the English curriculum

**Action:** Support of the school administration. OIF provided a letter from Barbara Jones to the school board, defending the works and the professional judgment of teachers.

**Resolution:** Retained

***Bleach* (series) by Tite Kubo**  
Highland School District, Arkansas

**Reason:** Graphic images

**Complainant:** Superintendent removed the series without following policy

**Action:** OIF provided resources to defend graphic novels and independent reading. Assistance in creating talking points for the librarian to speak at the school board meeting in defense of intellectual freedom. A letter was written by OIF but the superintendent denied circulation to the school board members.

**Resolution:** Reinstated

**Online Learning**

OIF coordinated webinars dealing with challenges to library materials and issues with meeting room policies. To view archived webinars, please visit <http://www.ala.org/onlinelearning/unit/oif>.

**ANGRY AND SCARED: EMBRACING THE CONCERNED PARENT**

In August, ALA's Office for Intellectual Freedom hosted acclaimed writers, educators, and librarians, Pat Scales and Jamie LaRue who talked about library interactions with parents who are concerned about library materials and trying to protect

their children. They shared valuable insights to guide a library's response from defensive to embracing, empathetic, and educational.

**CRAFTING MEETING ROOM POLICIES THAT KEEP YOU IN CHARGE AND OUT OF COURT**

On November 4, OIF Deputy Director Deborah Caldwell-Stone and Freedom to Read Foundation (FTRF) General Counsel Theresa Chmara led a well-attended webinar addressing concerns raised by recent lawsuits filed against libraries whose meeting room policies excluded meetings with religious activities. The webinar discussed the First Amendment principles and legal precedents that underlie these lawsuits, and provided practical guidance on crafting policies that allow the library to effectively manage its facilities while avoiding legal liability and preserving patrons' access and First Amendment rights.

**PICTURE BOOKS AND CHALLENGES: DEALING WITH CONTROVERSIAL TOPICS IN CHILDREN'S COLLECTIONS**

On November 18, in the first of (hopefully) many, OIF collaborated with the Intellectual Freedom Round Table and the Gay Lesbian Bisexual Transgender Round Table to provide a free webinar that discussed the classification of picture books and the challenges that arise with controversial titles. The round tables' sponsorship increased enrollment and gave a great membership perk for the round tables. Presenters: Carolyn Caywood, member of IFRT and GLBTRT, and Peter Coyl, chair of GLBTRT.

**Privacy Subcommittee**

The IFC Privacy Subcommittee, chaired by Michael Robinson, met jointly with the LITA Patron Privacy



Interest Group to discuss ongoing concerns and issues involving library user privacy.

At the meeting, the subcommittee finalized plans for Choose Privacy Week 2016 (see below) and began work on a set of patron privacy guidelines intended to provide guidance to library and information technology professionals on best practices and policies for protecting user privacy, in the same fashion as the recently published *Library Privacy Guidelines for E-book Lending and Digital Content Vendors*. The proposed guidelines will address Public Access Computers and Devices, WiFi and Networks, Integrated Library Systems, Websites and Discovery Layers, SIP, APIs, and Web Services, and Student Privacy. The subcommittee will seek input and advice from members and member groups as they work on these documents. The subcommittee hopes to complete the guidelines for review at the ALA Annual Conference in Orlando, Florida.

The subcommittee also discussed ALA-OIF's sponsorship of Let's Encrypt, a service provided by the Internet Security Research Group (ISRG) operated for the public's benefit. It will allow anyone who owns a domain name—including libraries—to obtain a server certificate at zero cost, making it possible to encrypt data communications with the server and provide greater security for library users and others accessing the library's website and online services. The subcommittee is planning guidelines, webinars, and other documents to guide libraries seeking to encrypt their websites.

## Projects

### BANNED BOOKS WEEK

OIF has partnered with SAGE again in 2015 and hosted a Banned Books Virtual Read-Out booth. Over 200

people participated in the Read-Out booth. The videos are available via the Banned Books Week channel on YouTube at [www.youtube.com/bannedbooksweek](http://www.youtube.com/bannedbooksweek).

In addition to the Banned Books Virtual Read-Out, OIF presented two webinars:

### Before the Mud Flies: Conversations for Banned Books Week

In September, Millie Davis from the National Council of Teachers of English and Kristin Pekoll shared practical ways to prepare colleagues for Banned Books Week. The speakers focused on talking points and ideas to encourage chats with those in the workplace not familiar with the First Amendment, the Library Bill of Rights and the rights librarians defend. The webinar embraces the idea that Banned Books Week doesn't have to be controversial or negative if we plant the seed of excitement and being proactive in our defense of the freedom to read.

### Advocating for Intellectual Freedom: Beyond "Banned Books Week"

In October, Susan Brown from Chapel Hill and Marci Merola, ALA's director of Library Advocacy, provided excellent tips about raising public awareness beyond Banned Books Week displays and events. It's important to have a strong foundation of intellectual freedom awareness, not just with librarians but also with support staff, boards, stakeholders, and most of all with your community or readers.

Banned Books Week 2016 will take place September 25–October 1. 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](http://www.ala.org/bbooks) and [www.bannedbooksweek.org](http://www.bannedbooksweek.org).

### CHOOSE PRIVACY WEEK

Choose Privacy Week, observed annually each 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 librarians to acquire the knowledge they need to insure patron privacy rights and 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.

This year, Choose Privacy Week will promote respect for minors' and students' privacy rights. The theme will be "Respect me and respect my privacy." In the works are a March 16 webinar on program planning and messaging for libraries and librarians planning Choose Privacy Week activities, as well as a series of online posts discussing various privacy topics, with an emphasis on minors' privacy rights. Among the invited bloggers are Dorothea Salo, Michael Zimmer, Galen Charlton, and Neil Richards, addressing such topics as protecting privacy in multitype consortial library systems, student data privacy legislation, privacy curricula, privacy from a vendor's perspective, and privacy as a form of respect.

### Action Items

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

- CD # 19.1, Resolution for Restoring Civil Liberties and Opposing Mass Surveillance



- CD # 19.2, User Generated Content in Library Online Systems

**SURVEILLANCE RESOLUTION**

Representatives from IFC, COL, SRRT, and Council formed a Working Group to review the National Surveillance Resolution discussed during last year’s annual conference and to revise it consistent with the Council debate at that meeting. Over the course of three conference calls in August, September, and October, the group discussed its charge and reviewed the resolution. Doug Archer, Aaron Dobbs, and Laura Koltutsky formed a drafting party and created a first draft revision of the resolution. The Working Group reviewed the first draft, made additional changes, and finalized the work on the document during the third call in October. At that time, the proposed draft document was taken back to COL, IFC, and SRRT for further review. All three groups reported that they could support the document in principle. The proposed draft of the revised resolution was then posted to the Working Group’s ALA Connect page at <http://connect.ala.org/node/246874> and also was sent to the Council listserv in mid-November for further comment and discussion. Comments received were very positive and no substantive changes were suggested. COL and IFC, with SRRT participation, discussed the final draft of the resolution at this Midwinter Meeting and jointly recommended its adoption to Council. As a result of this collaboration, The SRRT Action Council has accepted our invitation to appoint a SRRT liaison to the IFC and to the COL Legislative Assembly. We hope this process will serve as a model of how different groups within ALA can work together respectfully to resolve differences and advance the goals we share as an Association. We thank the

members of the Working Group: Kent Oliver (COL), Doug Archer (IFC), Al Kagan and Laura Koltutsky (SRRT), Aaron Dobbs and Jim Neal (Council) for their participation, and we thank COL Chair Ann Ewbank, for co-managing the process.

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.

Respectfully Submitted,  
ALA Intellectual Freedom Committee:

- Pam Klipsch (Chair)
- Doug Archer
- Danita Barber-Owusu
- Teresa Doherty
- Tiffany Arielle
- Clem Guthro
- Charles Kratz
- Jean McFarren
- Dale McNeill
- Michael Wright
- Hannah Buckland (intern)
- Johanna Orellana (intern)

The resolution below was adopted by the ALA Council on Tuesday, January 12, 2016.

**RESOLUTION FOR RESTORING CIVIL LIBERTIES AND OPPOSING MASS SURVEILLANCE**

Whereas the American Library Association (ALA) has always supported the fundamental principles of government transparency and public accountability that undergird the People’s right to know about the workings of our government and to participate in our democracy;

Whereas the ALA Council adopted “Resolution Reaffirming the

Principles of Intellectual Freedom in the Aftermath of Terrorist Attacks” (2002-2003 CD#19.1), “Resolution on the USA PATRIOT Act and Libraries” (2004-2005 CD#20.6), “Resolution on the Use and Abuse of National Security Letters” (2006-2007 CD#19.3), and “Resolution on the Need for Reforms for the Intelligence Community to Support Privacy, Open Government, Government Transparency, and Accountability” (2012-2013 ALA CD#19.2 and CD#20.40), and other surveillance-related resolutions;

Whereas the ALA “values access to the documents disclosing the extent of public surveillance and government secrecy as access to these documents now enables the critical public discourse and debate needed to address the balance between our civil liberties and national security” (2012-2013 ALA CD#19.2 and CD#20.40);

Whereas the ALA reaffirms that “these disclosures enable libraries to support public discourse and debate by providing information and resources and for deliberative dialogue and community engagement” (2012-2013 ALA CD#19.2 and CD#20.40);

Whereas the nation’s intelligence and law enforcement agencies conduct surveillance activities pursuant to multiple legal authorities, including Executive Order 12333, the Foreign Intelligence Surveillance Act (FISA) as amended, the USA PATRIOT Act, and the USA FREEDOM Act;

Whereas the ALA defends privacy rights and supports government transparency and accountability; and

Whereas passage of the USA FREEDOM Act meaningfully contributed to recalibration of the nation’s privacy and surveillance laws, restoring civil liberties, but accomplished only a fraction of all such necessary change; now, therefore, be it



*Resolved*, that the American Library Association (ALA), on behalf of its members and the public interest:

1. urges the President and Congress to amend all germane surveillance-enabling authorities, such as Executive Order 12333, the Foreign Intelligence Surveillance Act (FISA) as amended, and the USA PATRIOT Act, to:
  - a. Require government agencies to obtain judicial warrants before collecting any individual's personal information from third parties and require court approval for National Security Letters;
  - b. Raise the standard for government collection of all records under FISA from "reasonable grounds" to "probable cause" and sunset Section 215 of the USA PATRIOT Act (commonly known as the "library records" section);
  - c. Limit the government's ability to use information gathered under intelligence authorities in unrelated criminal cases, thereby making it easier to challenge the use of illegally obtained surveillance information in criminal proceedings; and
  - d. Prohibit the government from requiring hardware and software companies to deliberately design encryption and other security features to facilitate government access to information otherwise protected by such features;
2. recommits itself to leadership in the fight for restoration of the public's privacy and civil liberties through statutory and other legal reforms; and
3. commends and thanks all parties, both inside and outside of government, involved in developing

and securing passage of the USA FREEDOM Act, resulting in movement away from overbroad surveillance laws and practices for the first time in more than a decade.

Adopted by the Council of the American Library Association Tuesday, January 12, 2016, in Boston, Massachusetts

Keith Michael Fiels  
Executive Director and Secretary of the ALA Council  
2015-2016 ALA CD#19.2  
2016 Midwinter Meeting

### **USER GENERATED CONTENT IN LIBRARY DISCOVERY SYSTEMS** **An Interpretation of the Library Bill of Rights**

Libraries offer a variety of discovery systems to provide access to the resources in their collections. Such systems can include online public access catalogs (OPAC), library discovery products, institutional repositories, and archival systems. With the widespread use of library technology that incorporates social media components, intelligent objects, and knowledge-sharing tools comes the ability of libraries to provide greater opportunities for patron engagement in those discovery systems through user-generated content. These features may include the ability of users to contribute commentary such as reviews, simple point-and-click rating systems (e.g., one star to five stars), or to engage in extensive discussions or other social interactions. This kind of content could transform authoritative files, alter information architecture, and change the flow of information within the library discovery system.

The library is not obligated to open its discovery system to user-generated content. A publicly funded library can choose by policy or practice to do so, and limit the contributions of user-generated content to a defined class of users or limit the subject matter of user-generated content, as long as the distinctions drawn are viewpoint neutral and reasonable in light of the mission and purpose of the library. For example, the library could require that users contributing content to the library's discovery system possess a valid library card or an online account with the library or limit the subject of their reviews to resources they have used.

If a publicly funded library by policy or practice chooses to invite everyone to contribute user-generated content to the library's discovery system, the library then may not limit or exclude a particular user's content based upon the content's subject or viewpoint. Publicly funded libraries may define the time, place, or manner in which the user contributes the content to the library's discovery system. Such restrictions must be reasonable and cannot be based upon the beliefs or affiliations of the user or the views expressed in the user-generated content.

In any instance, libraries should develop and publish written policies addressing users' contributions to the discovery system. These policies should be made available in commonly used languages within the community served.

The library must clearly identify what is user-generated content and what is library-generated content in the library discovery system. Such a distinction serves to affirm both the users' First Amendment right to free expression and their responsibility for that expression.



Finally, the library must be scrupulous in protecting the confidentiality of personally identifiable information of users who contribute content to the library discovery system.<sup>1</sup>

Adopted July 13, 1951, by the ALA Council; amended June 25, 1971; July 1, 1981; June 26, 1990; January 19, 2005; July 15, 2009; and July 1, 2014.

**Note**

1. See Privacy: An Interpretation of the Library Bill of Rights, last amended July 1, 2014, [www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy](http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy).



## LIBRARIES Bakersfield, California

Sex, violence, drugs, and alcohol are common plot devices in movies and books for adults, but the father of a Standard Middle School student was shocked when his daughter came to him with a library book containing all of those issues.

“She began to read it and immediately brought it to my attention,” Brandon Duke said. “It took very little time for me to recognize that . . . this should not be in a junior high’s library.”

The book is called *Glass* and was written by Ellen Hopkins. It is the second in the Crank Trilogy, which follows the life of a girl named Kristina and her battle with addiction to methamphetamine. According to Simon and Schuster’s website, the book is recommended for children who are at least fourteen years old.

“Crank. Glass. Ice. Crystal. Whatever you call it, it’s all the same: a monster,” the website says in its description of the book. “Kristina thinks she can control it. Now with a baby to care for, she is determined to be the one deciding when and how much, the one calling the shots. But the monster is strong, and before she knows it, Kristina is back in its grip . . . and it won’t let go.”

Standard School District Superintendent Paul Meyers said once the school was made aware of Duke’s concern, it removed the entire trilogy from the library to evaluate the books.

The school’s library has a “restricted section” for the advanced readers, Meyers said. Parents are required to sign a form each year to allow their children to check out books from the section. “Even those books should be vetted,” Meyers said.

Books are acquired for the library by multiple methods, including donations, book fairs and requests from

teachers, according to Meyers. The Crank Trilogy was more than likely received through a book fair.

“We don’t know how this one slipped through,” Meyers said. “We are a human-run organization and we do make mistakes.”

The Standard School District’s Board of Trustees may ask for the issue to be brought before them, Meyers said. However, policies and procedures are in place that don’t require that.

“It’s a matter of asking ‘How do we tighten up our process?’” Meyers said. “We obviously don’t want to upset parents and we don’t want kids reading things they shouldn’t.”

Duke said he wants the board to get to the heart of the matter as soon as possible. “You (the board) are in a position of authority to make sure things like this don’t go by the wayside,” Duke told the board during its November 10 meeting. “In my opinion, a book like this should not be read by high school children, let alone kids in junior high.” Reported in: *Bakersfield Californian*, November 13.

## Knightdale, North Carolina

A Knightdale parent has raised concern over a book her first grader checked out from his elementary school’s library. It’s a graphic novel about a ghost story that is written specifically for kids. But Kay Walker said it’s not appropriate for students of any age.

“It was talking about a man who murders his family and shows a man walking with his shotgun going to his parents and his sister and brother,” said Walker.

Walker was stunned when her son brought home the book from Lake Myra Elementary’s library. She took pictures of it and posted it to Facebook and got a big response from other parents.

“I couldn’t imagine a teacher pulling this book off the library and sitting in front of her kindergarten or first grade class reading it to them,” she said.

The book *Amityville* is part of a series called Junior Graphic Ghost Stories published in 2006 by Rosen publishing. Rosen is dedicated to providing books to schools and libraries. On the publisher’s website, the book is listed as an interest level for grades three through six, and a reading level for grades two through three.

“To make it towards kids who are so young and they’re just learning what is right and what’s wrong, and giving them these ideas, it just it blows my mind,” said Walker.

Walker submitted a request for the book to be reviewed by a committee and was told the book has been pulled from Lake Myra’s library. Wake County Schools released a statement that said:

In accordance with Board of Education policy a committee is formed once an official request is made to review a book. This committee follows the review process as put forth by policy and then makes a recommendation regarding the book in a timely manner.

Walker hopes the book will be taken off of all shelves in Wake County Schools. “When you stare at an image of a man shooting his family, that gets in your head, whether or not you know if it’s wrong or right,” she said.

Walker said she intends to write the book’s author, John Perritano, to inquire why he would write such a story for such a young audience.

“Our children are our next generation. If we want things to change and violence to stop then we have to start with them,” said Walker. Reported in: *wncn.com*, November 18.



## SCHOOLS Crestview, Florida

One parent's objections to the phrase "Muslims pray to Allah" in a fifth-grader's workbook has led to the removal of the book from the Walker Elementary curriculum. Walker Principal Lorna Carnley said the *Worldly Wise 3000* workbook was old and could be replaced with a superior product at no cost.

"If we had removed this program, and that had hurt my children, we would have looked at it harder," Carnley said. "This was a no-brainer."

The phrase parent Roy Barbour had a problem with appears on page 100 of the workbook in a lesson on homophones, words that sound the same but have different meanings.

"Muslims pray to Allah" is intended to provide fifth-graders a supplemental lesson in differentiating between the words pray and prey, according to Okaloosa County School District spokesman Henry Kelley.

"It is a fact that Muslims do pray to Allah," Kelley said. "The example was the proper use of the word pray. The sentence didn't say you have to pray to Allah."

In his first correspondence with the school district, Barbour said, "I have yet to see the words God, Jesus or Christians in any assignment."

"I just wanted to draw attention to something that I felt was unnecessary when so many other options were available. For example: The farmers pray for rain," Barbour said. "With so much rebuttal to keep the Christian God out of school and 2015 being the year of being offended, as a Christian, I found this offensive," Barbour said.

Carnley said the book had been used at Walker since before she arrived as an assistant principal three years ago. It was replaced following Barbour's complaint with a workbook

offering "a much more rigorous curriculum," she said.

The *Flowcabulary* workbook was already available at the school and fifth-grade faculty immediately replaced the older book with the newer one. "The kids never missed a beat," Carnley said. Reported in: [nwfdailynews.com](http://nwfdailynews.com), March 1.

## Longwood, Florida

In response to a complaint from a parent of an elementary school student, three high school libraries in Florida have restricted access to the award-winning *This One Summer*, by Mariko Tamaki and Jillian Tamaki.

A parent of a third-grade student at Sabal Point Elementary School in Longwood complained about some of the language in the 2015 Caldecott Honor-winning graphic novel. The district removed the book from the library but then also had it removed from open shelves at three local high schools.

A letter from the National Coalition Against Censorship (NCAC)—signed by the Comic Book Legal Defense Fund, American Booksellers for Free Expression, Association of American Publishers, National Council of Teachers of English, American Library Association, and the PEN American Center's Children's and Young Adult Book Committee—points out how the decision undermines the freedom to read: "While the book may be above the maturity and reading level of elementary school students, its value for young adults at the high school level has been recognized by leading professionals. The book may not be of interest to every student, but as per Seminole County Public Schools' own policies, 'The [school's educational media] center shall provide a wide range of materials on all levels of difficulty, with

diversity of appeal, and the representation of different points of view."

The letter also notes that the decision appears to violate Seminole County's policies regarding challenged materials, and raises broader questions as well:

"Restricting a book with such established literary merit in three high school libraries solely because a parent complained about its content being inappropriate for her own elementary-aged child privileges the values of one person over the entire community, and raises serious constitutional concerns."

The graphic novel, about a pair of friends teetering on the brink of young adulthood, is no stranger to controversy. When it received a Caldecott Honor, an award usually associated with picture books, the work caused quite a stir among librarians and educators. Shortly after the announcement, in an interview the Tamaki cousins shared their own shock at the important recognition. "I wouldn't have even considered our book Caldecott material. Very thrilling and surprising," said Jillian Tamaki.

Columnist and former chair of the American Library Association's Intellectual Freedom Committee Pat Scales last year addressed a librarian's question about the appropriateness of the Caldecott recognition given to the graphic novel for older readers, saying that the book fulfills the award's criteria.

In response to the restriction of access in the Florida high schools, Mariko Tamaki said, "*This One Summer* is listed as being for readers ranging twelve to eighteen. It contains depictions of young people talking about, and dealing with, adult things. I think there are a lot of books, including a lot of great graphic novels,



that should be made available to teen readers.”

Mariko Tamaki also appreciates the librarians and educators who continue to shelve graphic novels in their collections, despite the controversy that might ensue. “A lot of libraries and librarians I know have embraced comics as being great books for teens, and that makes me very happy.” Reported in: *School Library Journal*, February 18.

### Coeur d’Alene, Idaho

The ad hoc literature committee of the Coeur d’Alene School District has recommended removing Jhumpa Lahiri’s novel *The Namesake* from a list of approved books to be read by high school students. The same committee voted last year to remove John Steinbeck’s novella *Of Mice and Men* from a list of books teachers may assign to ninth-graders. Its recommendation garnered national media attention.

Coeur d’Alene School Board Chair Christa Hazel responded to the committee’s vote, saying it was valuable feedback.

“I think input from the committee gives the board an idea as to what the community threshold is for appropriate literature,” she said.

The committee’s recommendation initiated a thirty-day review period during which the school board solicits public input on whether it should remove the book from a reading list. During the review period, students, educators, parents and members of the public will be able to weigh in on whether the book, which contains references to recreational drug use, is appropriate for high school-age students.

Last year, a similar committee recommended removing Sherman Alexie’s *The Absolutely True Diary of a Part-Time Indian* from an optional high school reading list in Meridian. During public testimony, students and educators advocated in favor of

retaining the text. Opponents of *True Diary* described it variously as profane and pornographic, as it contains references to masturbation.

While opponents of the text were briefly successful in removing it from the reading list, it was reinstated, with caveats, during a school board meeting in September 2014. Reported in: *Boise Weekly*, November 5.

### Jerseyville, Illinois

The Jersey CUSD 100 School Board responded December 18 to a local pastor who had complained about objectionable content in some books assigned to students in the district. Gary Goode, who teaches at Kingdom Increase Church in Jerseyville, and is also a bus driver for the school district, also spoke on the matter at the board’s November meeting. He raised the matter after his foster child was assigned to read *The Dead Poet’s Society*.

“I read most of the book, and I found it disturbing,” Goode said in an interview shortly after the meeting. “Very close to a strong, mild pornography. . . . To me that book represents a [disrespectful attitude towards] parents and their judgments. It shows rebellion towards teachers, and has graphic immoral areas.”

The book came to Goode’s attention after his foster son, Pete, a high school senior and a devout Christian, found *The Dead Poet’s Society* too objectionable to finish reading. Goode said the book diverged significantly from the film of the same name, and believes it much more troubling than the film. Pete was allowed to read a different book.

The school district allows parents who take issue with curriculum materials to request replacement assignments be given. Goode, however, hoped the district would pull the book entirely. Two members of the board replied to Goode’s request, and

both took an opposing position to his view.

“I think someplace along the line in your education, Gary, you’ve got to make your own decision about what you’re going to accept and what you’re not going to accept,” Ed Test, board president, said during the meeting. “Like you and I differ hugely on politics. I don’t accept you. You don’t accept me. But I think you listen [to opposing views].”

Test added he had read a number of books in college that he didn’t like, but he appreciated how they challenged him. “Most of our choices in the curriculum are done by people who are professionals in that area,” Test said, “which I am not, but I trust them, and that’s my answer to you.”

Board member Sherry Droste echoed Test’s sentiments. “I’m going to respect your opinion, but I’m going to concur that those students are going to have [exposure to objectionable materials during their education],” Droste said. “I, too, as an educator have a huge amount of respect for the curriculum folks and for the teachers that are investing a ton of time to evaluate what is most appropriate for kids at a given age or grade level. So I think we are doing a really good job, actually, of exposing them to a wide range of literary opportunities.”

Still, Goode was disappointed no action was taken. “I want to see them grow up with great characters, and so being a minister also I know that those kinds of ingredients alter the character of their little minds, and I wanted to see that book removed from the curriculum,” he said. “Kids only have so much time in a school day, so I think it’s just like a farmer. He goes to the field, he sows the very best seeds that he possibly can for that crop, and I think that there are immense books [they could read instead].”



Goode said he thinks books with potentially objectionable content have their place in society, but he does not feel kids should be exposed to them until after high school.

“I would relish taking three or four pastors in the libraries and sifting through, and then taking out with permission of the board and everybody the ingredients that are not going to build a great America in the future,” he said. Reported in: *Jersey County Journal*, December 18.

### Mattoon, Illinois

High school leaders have removed a book from the Mattoon High School curriculum for its use of lewd and possibly offensive materials.

Michele Sinclair, MHS principal, said the book, *Extremely Loud and Incredibly Close*, by Jonathan Safran Foer, was removed from an English class because the book contains several passages that were “extremely” vulgar detailing sexual acts. She said parents brought up concerns as to the content in the book.

“The problem wasn’t necessarily the book or the material,” Sinclair said. “The problem was that we did not provide parents with an opportunity to opt out.”

Sinclair said school officials should’ve given the parents the ability to say they were not comfortable with their child reading that material, as is done when R-rated movies are shown in the classroom.

“Once it was brought to our attention, then because we didn’t provide parents with that option, we didn’t really feel like we had a lot of alternatives at this point,” Sinclair said.

Sinclair said school leaders are addressing the process, working with the English department, on creating a document with the summary, connection to the curriculum and notes about the text of books.

“We want full disclosure to parents about what their students are reading,” she said. “The bottom line is these are still kids. Yes, they are young adults, but they are on the cusp of adulthood,” Sinclair said. “Parents should have the right to determine what their students are exposed to in the classrooms.”

Sinclair said deciding which books would be the best to engage the students is challenging. “When students get to certain level where their reading level is so high and we want to provide them with the novels that are appropriate with their reading levels, it is difficult to totally avoid adult issues,” Sinclair said.

Books are added to the curriculum by first being recommended by the English teachers, who brainstorm high engagement books they would like the students to read.

Those books are then approved through the Curriculum Coordinating Committee and Mattoon board of education.

Sinclair said she does not know if *Extremely Loud and Incredibly Close* will be used in the curriculum again, even under the new procedure. Reported in: *Journal-Gazette and Times-Courier*, September 23.

### Philadelphia, Pennsylvania

After *The Adventures of Huckleberry Finn* was published in 1885, the book was boycotted in some places in the United States for portraying friendship between a black man and a white boy. “In its time, it was derided and censored,” said Deborah Caldwell-Stone, deputy director of the American Library Association’s Office for Intellectual Freedom, which tracks challenges to books.

Today, Mark Twain’s classic—about a boy who flees his abusive father and travels down the Mississippi River with an escaped slave—is still

sometimes challenged in American schools, but for nearly the opposite reason: its liberal use of the N-word and perceived racist portrayals of black characters.

This week, a Montgomery County school removed *Huckleberry Finn* from its curriculum after a group of students said the book made them uncomfortable.

After a forum for students and faculty, the administration of Friends’ Central School decided to strike the book from the eleventh-grade American literature class, principal Art Hall said in a letter to parents.

“We have all come to the conclusion that the community costs of reading this book in 11th grade outweigh the literary benefits,” Hall said in his letter.

The book’s use of the N-word was challenging for some students, who felt the school was not being inclusive, Hall said. According to the school’s website, Friends’ Central is guided by Quaker philosophy, and “peaceful resolution of conflicts, seeking truth, and collaboration are key aspects of a Friends’ Central education.”

“I’m very proud of the process that our community engaged in to make the decision,” Hall said.

The novel was the no. 5 most frequently challenged book in the country during the 1990s, according to the American Library Association (ALA), and no. 14 in the decade of the 2000s.

“It will always be an issue because it touches on a very sensitive nerve, which is America’s history of racism,” said Antonio Aiello, a Banned Books Week coordinator at PEN American Center, a New York-based literary association.

Hall said the book will remain in the school library. *Narrative of the Life of Frederick Douglass* will be taught in the eleventh-grade courses, potentially alongside a second novel.



The Wynnewood school isn't alone. *Huckleberry Finn* has sparked controversy at American high schools in recent years, and in 2011 a publisher made waves when it released a modified edition that removed all instances of the N-word.

Other local schools said they either teach *Huckleberry Finn* or have it on their library shelves. The West Chester Area School District, for example, often teaches it in the eleventh grade. The Lower Merion district makes it available in its library.

"We don't shy away from teaching it," said Jim Miller, dean of students and an English teacher at Friends Select School. "We see it as a very important opportunity to educate kids further about the use of language, especially the use of the N-word."

He said the classes teaching *Finn* include a unit on the N-word and encourage students to think critically about history and language. The school hasn't been challenged by parents or students about books, he said.

At Greene Street Friends School, a course of study, new this year, includes books not traditionally used in schools, a spokeswoman said, such as Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian*, which was the most frequently challenged book of 2014 by the ALA count.

"We don't let concerns about censoring or banned books shape" our curriculum, the spokeswoman said.

In recent years, the ALA has recorded about three hundred to four hundred challenges each year, Caldwell-Stone said, which represent "a snapshot" of what's happening across the country. Removing a text from curriculum because of concerns about its content is generally considered a challenge to the book by those who track bans.

"We would still see this as a kind of censorship because there is something

to be learned from this work," Caldwell-Stone said.

Hall said the choice would empower students. "I do not believe that we're censoring. I really do believe that this is an opportunity for the school to step forward and listen to the students," he said. Reported in: *Philadelphia Inquirer*, December 12.

### Eau Claire, Wisconsin

Some parents in Eau Claire are upset with what is being taught in their schools. They claim third-grade students had to memorize an Islamic prayer. The superintendent says that is not the case, and the rumors in the community are inaccurate.

Superintendent David Gray said the rumors center around a book called *Nasreen's Secret School*, which is set in Afghanistan. The book is part of a curriculum called "Engage New York," which is being implemented at all Eau Claire schools this year.

Some parents though, are already calling for the school to change back to last year's teaching. "It walks a very gray line about preaching religion or just exposing [students] to it," said Art Keene, a parent who is concerned about the curriculum.

The so-called "gray line" has to do with this excerpt: "Please Allah, open her eyes to the world, I prayed as I left her there."

Superintendent Gray says the line is mentioned by the main character's grandmother and students are not being forced to memorize or recite any prayer.

"There is nothing that requires the students to even consider memorizing an Islamic prayer, let alone expecting them to say one or anything else," said Gray.

Sherri Keene is the president of the Eau Claire's Parent Teacher Organization, and feels a little uncomfortable with the book being taught.

"These things shouldn't be brought up, it's supposed to be completely separate between at the school and religion," said Sherri Keene.

Art Keene views the book a little differently than his wife. "I'm okay with them being exposed to it, but as long as it's balanced, but the problem is the teachers aren't prepared," said Keene.

It's the preparation that's Keene's biggest complaint with the new curriculum. "The teachers are telling us that they have had no training on how to use this new material. They find the teacher guides very difficult to follow," said Art Keene.

Eau Claire switched to the "Engage New York" curriculum because Superintendent Gray says test scores were so low. "We weren't getting the results that we needed," said Gray.

Superintendent Gray says they are working with teachers to support them and address their concerns, but he did not outline a specific plan for any future training. Reported in: *wsbt.com*, December 14.

### Mount Horeb, Wisconsin

A southern Wisconsin elementary school canceled a planned reading of a children's book about a transgender girl after a group threatened to sue. The Mount Horeb Area School District released a statement saying it would not proceed with its planned reading of the book *I am Jazz*. The district said it would give the Board of Education the opportunity to address a situation, for which the district has no current policy.

In late November the principal of Mount Horeb Primary Center sent a letter to parents saying the book would be read and discussed because the school has a student who identifies as a girl but was born with male anatomy.



“We believe all students deserve respect and support regardless of their gender identity and expression, and the best way to foster that respect and support is through educating students about the issue of being transgender,” the letter said.

The Florida-based Liberty Counsel group threatened to sue, saying it was contacted by concerned parents. In a letter to the school district, the group contended that reading the book would violate parental rights. The Southern Poverty Law Center classifies the Liberty Counsel as a hate group that advocates for “anti-LGBT discrimination, under the guise of religious liberty.”

In its statement the district said as it seeks to address the needs of the individual student, it will be mindful of the needs of other students and families. It also said families whose children may be affected will be notified of future actions, and the goal is to protect all students from bullying so they can learn together in a safe environment. Reported in: [tmj4.com](http://tmj4.com), November 28.

## STUDENT PRESS Chicago, Illinois

High school reporters at Steinmetz College Prep had spent weeks working on a story about a change in the school bell schedule, even sifting through hundreds of surveys. Little did they know their story would initially be censored, even resulting in a threat from Steinmetz Principal Stephen Ngo to eliminate the eighty-one-year-old school paper entirely.

“I kind of felt like all of our work was going to waste,” said McKenzie Lacefield, a reporter for the *Steinmetz Star*, which has a storied history as the alma mater of *Playboy* editor-in-chief Hugh Hefner, whose ongoing donations cover the cost of printing.

Following public outcry, two meetings between Ngo and the journalism class and some adjustments to the original story draft, the story is set to run in the January-February edition of the *Star*.

The new bell schedule, implemented this school year, pushed the school start time back an hour to 9 a.m. The article addressed the effects of the new bell schedule and includes data from a survey students conducted. In total, the student reporters received nearly 1,400 responses from students, parents and staff members. Lacefield said she felt like there was nothing controversial about the story and the reporters had aimed to present different perspectives on the topic.

And while Lacefield and *Star* Adviser Sharon Schmidt say the story was censored, administrators argue it was always their original intent to postpone publication to allow more time for reporting.

Schmidt, who is also a teacher at Steinmetz, said the trouble with the story started after she contacted Randal Josseland, Network 3 chief of schools for Chicago Public Schools, for comment on the survey. Ngo, already upset at the tone of Schmidt’s email to Josseland, received the original article and decided to postpone its publication to allow the students more time to conduct more interviews.

“I asked them to address some things that were missing,” Ngo said, adding that he wanted students to interview members of the local school council and the school nurse.

Although Schmidt returned a revised article days later, Ngo said he was too busy to review the article and decided to once again postpone the story. Ngo said it was never his intention to permanently kill the story, but to postpone its publication to allow for further reporting.

“That was a big surprise to me and I thought it was very unreasonable,” Schmidt said.

Ngo began prior review of articles at Steinmetz in 2013 after a controversial editorial cartoon appeared in the school newspaper, something that troubled the local school council and school staff members, he said. He cited the *Hazelwood School District v. Kuhlmeier* Supreme Court decision as providing him authority to review content before publication. *Hazelwood* allows school officials to censor articles in student newspaper as long as there is a reasonable educational justification and the censorship is viewpoint neutral. Although he has been reviewing articles prior to their publication since 2013, Schmidt said this was the first time he withheld an article.

Ngo met with the journalism class December 16 to explain his decision. Lacefield said Ngo did not directly answer any of the students’ questions and never gave a clear reason as to why he was censoring the article. “It was useless, it was just kind of a waste of time,” Lacefield said.

Ngo said he reiterated his recommendations for further reporting in that meeting and had told the class that he wanted to postpone publication until after the break. But to Schmidt, there was not much else to research or report—the students had spent weeks working on the story, she said. Displeased with the meeting, Lacefield decided to publish the story on her personal blog two days later.

“I really thought that people should get it one way or another,” she said. Lacefield said she didn’t want to wait for 2016 to see the story come out and knew school administrators could not stop her from publishing on a platform not affiliated with the school.

After Lacefield published the story online, Schmidt reported on the



situation for *Substance News*, an online education news site. Local news outlet *DNA Info* reported on the censorship as well.

After Schmidt's article was published, Ngo sent out an email to school counselors stating there would be no journalism program next year. "Scratch Journalism [sic] for next year. We will not be offering it anymore. There will be no more *Steinmetz Star*. I'm still deciding what to do with it for the second semester," Ngo wrote.

"I thought that entire email was crazy," Lacefield said. "It was not thought through." Schmidt said she was angry and hurt by the email, but was prepared to fight the administration to keep the paper running.

"I just thought it was ridiculous, because it's such a good program," Schmidt said.

Despite his email, Ngo said he has no intention of ending the journalism program at Steinmetz, adding that the students do a great job with the publication. Ngo said he wrote the email in an emotional state after learning that the stories were posted online.

After the holiday break, Ngo and Jossierand met with the journalism class to talk about why they postponed publication of the story. Still, Lacefield said the class never received a clear reason why the article was censored in the first place. "Overall, it's been difficult to get answers," Lacefield said.

While the *Steinmetz Star* will continue to publish a print edition through the end of the school year, Ngo said it's still up in the air whether the *Star* will continue in its current form, as grant funding for printing is set to run out at the end of this school year.

While she is disappointed the story didn't run last year, Lacefield said she is glad it will finally be printed in the student newspaper. "I feel like we've

won a war," Lacefield said. Reported in: splc.org, January 13.

### Missoula, Montana

When a Montana high school newspaper published topless pictures on the cover of its January edition, in an attempt to discuss the "Free the Nipple" gender equality movement that is sweeping the nation, district officials recalled the issue immediately.

The controversy led to the school principal, who reviewed the issue before publication, being suspended without pay for three days and the newspaper adviser receiving a formal reprimand. The student journalists are currently fighting for their newspaper to be republished in the University of Montana's student newspaper *Kaimin* with an editor's note warning readers that the content may be offensive.

The photos accompanied an editorial titled "Free the Nipple" in the *Wire* produced by Willard Alternative High School students. The editorial discussed the difference in perception between male and female toplessness and questioned society's assumption that gender defines whether it is appropriate to expose one's chest.

The newspaper's cover featured five topless women and one topless man with their nipples hidden by red dots and faces cropped out. But inside the edition, page 8 featured a photo of a topless man and woman with their nipples bare and fully exposed.

"The breast's main function is to nurture, not to cater to the male gaze," editorial author Chase Boehmle wrote. "American culture is so backwards that it is more offensive to use a body for its intended purpose, than it is to fetishize it."

In an interview-based section following the editorial, a breastfeeding mother answered, "I think it's kind of fucked" in response to negative

opinions associated with public breastfeeding.

The edition also contained a separate piece within the editorial section titled, "Misconceptions SLAMMED," highlighting derogatory statements made to breastfeeding mothers in the comment sections on parenting blogs. One of the misconceptions read, "I can't just whip my dick out and feed my wife at a restaurant, so why should you get to whip out your tit and feed your baby?"

Within thirty minutes of the newspaper's distribution, the Missoula County Public Schools district recalled the edition and began investigating whether it violated district policy. The investigation found the *Wire* had violated Board Policy 3221, which states school-sponsored publications may not contain material "libelous, obscene, or profane" nor cause "a substantial disruption of the school."

Missoula County Public Schools released a statement defending officials' decision to recall the newspaper, stating it was inconsistent with school board policy because of the nude photos and "lewd and vulgar" language within the edition, specifically "fucked" and "dick." The district requested the *Wire* revise the issue by removing the photos and explicit language and then seek republication.

"The editorial Free the Nipple is well reasoned and provides an avenue for reasonable discourse on a controversial topic," the statement said. "It is the use of partially nude women perceived to be students that violates board policy."

But Lisa Waller, the *Wire* faculty adviser, said the individuals in the photos are not students of any high school and are over the age of eighteen.

Keaton Alexander, co-editor of the *Wire*, said all of the models were



consenting volunteers who signed confidentiality contracts.

Instead of revising the issue and republishing it within the school, Waller and the student journalists are in talks with the University of Montana's student newspaper, the *Kaimin*, which might reprint the *Wire*'s entire issue.

Many in the school and larger community are disappointed by the district's decision to recall the edition, arguing it reinforced the double standards surrounding gender equality.

"The message [of the article] was merely proven by the controversy," Alexander said. "The ideas could certainly remain if reprinted without the images, but the point would be significantly dulled." He said without the nude photos, the editorial would be reduced from an intellectual action of activism to mere commentary on the issue.

Jacquelyn Davis, a student teacher at Willard, said the district overlooked the issue of gender equality, and thus played a part in reinforcing sexism. "The language that the district tried to censor was meant to emphasize and challenge discrimination against women," Davis said. She said the recall robbed readers of the opportunity to learn about and challenge a relevant example of sexism, while also silencing the students' voices.

The January edition of the *Wire* took nearly three months of research and ten weeks of writing, Alexander said, as well as several days of design work and editing to produce a final version.

Waller, Willard Principal Jane Bennett and the *Wire* staff deliberated for several days before deciding to publish the edition. Waller said the district pulled it in a "knee-jerk reaction," within a half hour of its distribution and without hearing any complaints.

The district cited legal precedent in Supreme Court cases *Tinker v. Des Moines Independent Community School District*, *Bethel School District v. Fraser* and *Hazelwood School District v. Kuhlmeier* to support its decision, stating the right of schools to "maintain the culture of the learning environment and support speech in student publications that aligns with the District's curriculum."

Superintendent Mark Thane said the district used the *Hazelwood* precedent in particular to determine whether the edition violated board policy during its investigation. The Supreme Court's *Hazelwood* ruling gave administrators the right to censor student publications if they can demonstrate a reasonable educational justification and if the censorship is viewpoint neutral.

"One of the most important points of *Hazelwood* is making certain [the publication] is suitable for the audience it is intended for," Thane said. "The *Wire* is a school-sponsored publication directly tied to the curriculum."

Though the photos were disruptive to the educational functions of the district, he said, they were not considered obscene under the policy. Thane said the "Free the Nipple" article itself was well written, and he fully supports the students exploring controversial topics, but without the topless photos and inappropriate language.

Alexander said the legal ambiguity used to censor the *Wire* was "entirely unjust."

"This would never happen to a publication run by adults," he said. "The editorial was believed to be unvaluable from the start, because the voice from which it came is societally considered to be ill-informed and naive." Reported in: splc.org, February 3.

## Philadelphia, Pennsylvania

Michael Moroz knew he might receive some criticism for a student newspaper column critical of race-related protests. But he didn't expect the criticism to come with a police escort.

After facing death threats and a firestorm of criticism from students and alumni over an opinion article critical of sit-ins and hunger strikes at the University of Missouri, the Central High School senior walks from class to class with school police. He has retained an attorney for advice and to help him with media coverage of the situation.

"It's not exactly comfortable walking (around) with a school police officer," Moroz said.

The column, titled "A Case of Overreaction" and published in December in the Philadelphia school newspaper, *The Centralizer*, argues that protests at the University of Missouri were an overreaction to a number of racially charged controversies on campus. Moroz's column was published next to an opinion article that supported the demonstrations.

In another part of the article, Moroz also addressed the killing of Michael Brown, an unarmed African American young man who was shot by a white police officer in Ferguson, Missouri, in 2014.

"Brown was, at worst, justifiably killed, and at best, a thug," Moroz wrote in the article.

Although the article first appeared in the print edition of *The Centralizer*, Moroz said it was not until the article was posted on December 27 on the school newspaper website—and featured on their Facebook page—that students and alumni alike began to comment.

"That's when the threats really started coming in," Moroz said.



Some of the social media comments turned threatening, with one commenter calling on people to “shoot” Moroz, while another said people who liked the article “need to be dealt with.” Another commenter threatened to “drag Moroz by his satchel.” While the threats are no longer as frequent, Moroz said he continues to receive visceral comments daily.

After one day online, student editors removed Moroz’s article from the newspaper website and posted a message on their Facebook page addressing the decision.

“If an article comes across as insensitive, and the Central community would rather have it taken down because of this, then an article will be taken down,” staff members said in the Facebook message.

Moroz said it felt like the paper did not support him or his article. He also said the Facebook message set a bad precedent for the newspaper.

Student editors, Moroz said, censored his piece from the website. It can now only be found in the PDF file of the print edition that contained his original article.

Fernando Gallard, spokesman for the School District of Philadelphia, said the article was not censored and can still be found online, as well as in the print editions which are still at the school. “It’s 100 percent published,” Gallard said.

Moroz said he has been all but stripped of his title as managing editor and no longer has access to the website or the newspaper email account. He is no longer allowed to post or edit articles and can only do assignments his fellow editors assign him, Moroz said. “Now he’s basically a managing editor in name only,” said Jordan Rushie, Moroz’s attorney.

Rushie said school administrators should be teaching students how to

handle people they disagree with instead of infantilizing them by removing content that is upsetting. He said students should be able to criticize, but should not be able to censor content they disagree with.

“Diversity means a lot of things,” Rushie said. “But it also means a diversity of ideas.”

In response to the incident, Gallard said Central President Timothy McKenna scheduled a special advisory program with students for later this month to discuss freedom of speech, Moroz’s article and how to respond to opinions in a responsible manner, especially on social media.

While he’s happy the school has scheduled the program, Moroz said the fact that the administration is addressing it shows there is a problem. “It’s just remarkable that it has to be done,” Moroz said.

Still, Gallard said students at Central come from a wide array of backgrounds and have a variety of beliefs and views. “These are kids that are proud of being open-minded,” Gallard said.

With threats on his life, Moroz argues school administration should have been more supportive of his situation. Moroz said school administrators should have immediately sent out a school-wide email making clear that any threats would be punished by the Philadelphia School District’s Code of Student Conduct.

Rushie also said the school should be doing more to enforce the code of conduct, which has policies on bullying, threats and harassment. The code defines threats as “aggressive verbal or written language or gestures directed towards a student and/or school community member.” According to the code, students responsible for threatening students or staff with aggravated assault can face suspension,

lateral transfer or disciplinary school assignment.

“The school is not applying the handbook, and the handbook should apply to everybody,” Rushie said.

Rushie said he does not want to stop criticism of the article, but wants to ensure Moroz has a safe learning environment at Central.

Gallard said school administration have punished students as a result of their social media comments. He also said students who did make threatening comments were referred to the Philadelphia Police Department. “Our principal has taken the appropriate disciplinary actions,” Gallard said. Reported in: [splc.org](http://splc.org), January 15.

### Mt. Vernon, Virginia

When Anderson Bonilla became editor in chief of the yearbook at his Virginia high school, he decided he wanted to show student life as it really is instead of the glossy, idealized version of high school so often memorialized.

There is a feature about Mount Vernon High School’s immigrant students, and another showing classmates who are learning English. There is a page that gives tips on how to help students cope with grief after losing a friend. And there are two full pages dedicated to showing the lives of teenage mothers who attend the school.

“We want to show the real world of what Mount Vernon is,” said Bonilla. He made the theme of the *Surveyor* “Where we really live.”

“We wanted to report something worth knowing,” he said.

But a photo of one of the pregnant teens baring her stomach ignited a fight between student leaders who want to show “the real world” and school officials worried about how it might be viewed by students later in life.



According to Bonilla, Principal Esther Manns said she will not allow the photos of Hannah Talbert, a junior at the school, to be featured in the yearbook. In a statement, a school spokesman said that Manns “raised concerns” about some photos and asked for students to make sure they had permission to run them. She has not made any final decisions, spokesman John Torre said.

Talbert took a series of self-portraits and posted them on Instagram. She initially did not know that her photos would be in the yearbook, but after she learned about the plan, she signed off. She said she is proud to be a teen mother balancing the care of a six-month-old with a full load of International Baccalaureate courses.

“I’m going to buy a yearbook, and me having a baby was a big part of my life,” said Talbert, who recently turned 17.

“I’m kind of disappointed that the school wanted to take it out,” said her father, Mac Talbert. He believes that showing his daughter in the yearbook could make other young women who find themselves in similar circumstances feel less alone. “Hannah’s not the only kid who has had to face this. She’s taking it head-on.”

The case pits the First Amendment rights of high school students against the concerns of administrators who worry about the long-term impact of the photos, especially in the context of sensitive issues, including teenage pregnancy.

Bonilla said he left his meeting with the principal believing that she had decided the photos of Talbert would not appear in the yearbook. She did not, however, submit any written decision on the pictures. Under the school district’s policies, students can appeal a decision in writing.

District policy states that principals can censor only material that they

believe will cause a disruption or that is “harmful to juveniles.”

“We are actually giving a realistic view of what these girls go through,” Bonilla said. “She’s still here. She’s getting her education. That’s what we’re trying to show the school.”

“I don’t think I’ll regret it,” Talbert said of appearing in the yearbook. “That would be like saying I regret having my son, and I don’t.” Reported in: *Washington Post*, December 23.

## PERIODICAL Bowling Green, Ohio

An Ohio newspaper editor was fired for insubordination after allowing staffers at the *Bowling Green Sentinel-Tribune* to read an editorial she wrote about the National Rifle Association and responsible gun ownership.

Jan Larson McLaughlin said she didn’t think she was fired for writing the editorial, but for attempting to talk with the publisher, Karmen Concannon, about “how to proceed” after Concannon rejected it.

“I knew that particular editorial was dead, but I needed to know how to proceed from there,” McLaughlin said. “I needed some direction. She refused to talk to me. . . . The newsroom standing behind me was just the last straw of me constantly pushing to be a better newspaper, to be who we are supposed to be in the community.”

The unpublished editorial urged gun owners not to let the powerful lobbying arm of the NRA continue to control gun policy in America.

“The NRA has not always been the paranoid ‘pry the gun from my cold dead hands’ organization that it is now,” McLaughlin wrote. “It was formerly an association aimed at serving its membership by providing safety classes, marksmanship training and even gun control support. But

somewhere it got hijacked from its real purpose to its fanatical presence. It’s time for reasonable gun owners to say enough is enough.” Reported in: [talkingpointsmemo.com](http://talkingpointsmemo.com), December 16.

## FOREIGN Kuwait; Saudi Arabia

The Ministry of Education in Kuwait has pulled eight books from its schools, saying they contained “inappropriate” ideas and illustrations. They did not mention further details. The ministry made the move after it received complaints from several parents who cited concerns about the influence of such books on their children.

Ahmad Al Kindari, the head of libraries at the ministry, said in a note to all schools there had been observations and calls by parents about the books even though they had been endorsed by the inspection teams.

“We are taking out the books because we are keen on honoring our pledge to assuming our educational role,” he wrote. “We will review the books at a later stage.”

One book, *Memories Are Chasing Me*, had already been pulled; the other seven to be taken off the shelves are biographies of Picasso, Shakespeare and Cleopatra, *Hayfa Confesses*, *Midnight Crimes*, *My Conversation with My Son*, and *My Conversation with My Daughter*.

Last month, Saudi education authorities called for pulling around eighty books from the shelves of libraries and learning resources centers in schools that promoted Muslim Brotherhood ideology. Officials were given two weeks to remove the religious books that the authorities banned.

The list included works by religious authors Hassan Al Banna, Yousuf Al Qaradawi, and Sayyed Qutb.



Al Banna was the founder of the Muslim Brotherhood movement in Egypt while Qutb, an Islamic theorist, was a leading member of the Egyptian Muslim Brotherhood in the 1950s and 1960s.

Doha-based Al Qaradawi, an Egyptian Islamic theologian who chaired the International Union of Muslim Scholars, had a regular religious talk show on pan-Arab broadcaster Al Jazeera, allowing him to reach millions of viewers. However, he often waded into controversy over fatwas and views.

In their note, the education authorities warned all schools not to accept any gifts of books or publications and to limit their resources to what the education ministry offered them. Reported in: *Gulf News*, January 18.

### Doha, Qatar

A book based on Disney's *Snow White and the Seven Dwarfs* has been removed from a Qatar school library after it was deemed to contain "indecent" illustrations. Officials from Qatar's Supreme Education Council intervened after a complaint from the father of a pupil at the Spanish SEK International School, based in the Gulf state's capital Doha.

The father claimed the book contained illustrations and phrases that were "indecent" and contained "sexual innuendo," the Al-Sharq newspaper reported. It is not known which specific images caused offense, but the book cover shows a smiling Snow White being held by the prince who in the story revives her with a kiss after she eats a poisoned apple.

SEK principal Vivian Arif told *Doha News* that the school took "immediate action" after receiving the

complaint. "SEK International School Qatar is proud to be established in this country and presents its formal apologies for any offense that this unintended situation may have caused," Arif was quoted as saying in a statement.

The school opened in September 2013 and has more than 150 pupils from 27 different countries, according to its website. It offers classes for students from the ages of three to eighteen.

The book was based on the Disney animated version of *Snow White*, released in 1937 and based on the Brothers Grimm fairytale. The removal of the book came less than a fortnight after Qatar banned the film *The Danish Girl*—about an artist who undergoes one of the world's first sex changes—after protests about the film's alleged "depravity." Reported in: *Deccan Chronicle*, January 21.



## US Supreme Court

The Supreme Court is staying out of an interesting free speech debate about the power of school officials to discipline students for things they write or say away from school.

On February 29, the justices let stand the suspension of a Mississippi high school student who posted a rap song online that criticized two coaches over allegations they behaved inappropriately toward female students.

Student Taylor Bell recorded the song at a professional studio over winter break and then posted it on his Facebook page in February 2011. Bell sued after Itawamba Agricultural High School in Fulton, Mississippi, suspended him for seven days. Lower courts upheld the suspension, saying it made no difference where Bell made and distributed the song.

The case is *Bell v. Itawamba School Board*.

In a brief filed in December, rap performers including T. I., Big Boi and Killer Mike, urged the Court to hear the case. The rappers argued that rap music is a political and artistic juggernaut that deserves attention and First Amendment protection.

“The government punished a young man for his art—and, more disturbing, for the musical genre by which he chose to express himself,” their brief said.

The case dates back to December 2010, when several female students told a fellow student, aspiring rapper Taylor Bell, that two of their coaches were allegedly engaging in highly inappropriate sexual behavior—allegations that the girls eventually affirmed in sworn affidavits.

Convinced that any report of this misconduct to school officials would fall on deaf ears, Bell posted a rap song to Facebook and YouTube that identified the coaches by name and lambasted their behavior. Drawing on

the long tradition of social protest in rap music, as well as the profane and violent rhetoric that is common to the genre, the song takes (metaphorical) aim at the coaches.

“Looking down girls’ shirts, drool running down your mouth,” Bell sings of the coaches. “Going to get a pistol down your mouth.”

Bell, who had a nearly spotless disciplinary history, recorded the song away from school during winter break, and he never played it or performed it on campus. Nevertheless, school officials—who did not investigate or deny the allegations against the coaches—eventually learned about the song and suspended Bell, forcing him to attend an “alternative” school for six weeks. During the disciplinary process, administrators never notified police. They never bothered to search Bell’s locker.

In other words, nobody at the school appeared to believe that the song was a threat. Even one of the coaches identified in the song said he thought it was “just a rap.”

And yet after Bell appealed his punishment, arguing that his song was being misrepresented, the school board upheld his suspension on the grounds that he had “threatened, harassed, and intimidated” school employees. The school board’s decision was later upheld by the Fifth Circuit Court of Appeals in a divided opinion.

Judge Rhesa Hawkins Barksdale, writing for the majority, said the song was “incredibly profane and vulgar” and contained “numerous spelling and grammatical errors.”

“If there is to be education,” Judge Barksdale wrote, “such conduct cannot be permitted.”

A dissenting judge, James L. Dennis, said the issues addressed by Bell were exactly the sort of thing that the First Amendment was designed

to protect. “It bears mentioning,” Judge Dennis added, “that the school board has never attempted to argue that Bell’s song stated any fact falsely.” Indeed, he wrote, “four different female students submitted sworn affidavits detailing the sexual harassment they endured at the hands of the coaches.” Reported in: *New York Times*, February 29; [cnn.com](http://cnn.com), February 18.

The Supreme Court declined November 9 to rule on whether the government needs a warrant to collect cellphone location information, dealing a setback to data privacy advocates.

Attorneys for Quartavious Davis, who was convicted of a string of robberies partly because of phone location data, had appealed the case after a lower court ruled against Davis. Law enforcement used records from Davis’s cellphone carrier, MetroPCS, to establish where he was during a crime spree in Florida in 2010. He was convicted and sentenced to almost 162 years in prison.

Davis’s attorneys asked a federal appeals court to throw out his conviction, arguing that collecting the cellphone location data without a warrant violated his privacy rights under the US constitution.

The Stored Communications Act allows law enforcement to use either a warrant or a court order to gather cellular location data, and in Davis’s case a court order was used. His attorneys argued the constitution required the stronger protection of a warrant.

A panel of judges in the US Court of Appeals for the Eleventh Circuit agreed in 2014, though they let the conviction stand because police had collected the data in good faith at the time. But the government then asked all the Circuit to hear the case *en banc*, and they ruled that collecting the records was constitutional.



Cellphones can be tracked based on which base stations they connect to. The technique is not as precise as GPS (Global Positioning System) but can establish a subscriber's general whereabouts at a given time.

The digital rights organization Electronic Frontier Foundation said it was disappointed that the Supreme Court declined to hear the case but that it expects the court to look at the issue soon in another case. For the moment, there is no clear legal standard on whether a warrant is required. Two federal appellate courts have ruled that no warrant was necessary, but a third appeals court said that warrants are required. That divergence of views normally is enough to create a so-called "split" in the appellate courts, which would necessitate Supreme Court intervention to resolve the conflict. But the Court of Appeals for the Fourth Circuit, which ruled in favor of privacy, set aside its decision and agreed to rehear the issue.

That means there's no split in the circuits, and courts in the majority of the nation are free to rule as they see fit on the issue.

"As the government is able to track the routes we take through our lives with greater and greater precision, the question of whether the Fourth Amendment protects this sensitive and private information is one we should all be concerned with," EFF Senior Staff Attorney Jennifer Lynch said in an emailed statement.

Cell-site tracking has become extremely important to crime fighting in the wake of the high court's 2012 ruling that police need a warrant to place GPS trackers on vehicles. Equally important, in all the cases on the cell-site location tracking, the government argues that cell-site records are not constitutionally protected. Instead, the authorities maintain that they are business records that the

telecommunications firms may hand over if the government asserts that reasonable grounds exist to believe the data is relevant to an investigation.

That position is based on Supreme Court precedent dating to the 1979 case of *Smith v. Maryland*. That case has justified the legal underpinnings for the National Security Agency's telephone metadata snooping program—the program NSA whistleblower Edward Snowden exposed.

In Davis's petition to the justices, his attorneys at the American Civil Liberties Union said that 1970s precedent is outdated.

"It is virtually impossible to participate fully in modern life without leaving a trail of digital breadcrumbs that create a pervasive record of the most sensitive aspects of our lives. Ensuring that technological advances do not 'erode the privacy guaranteed by the Fourth Amendment' requires nuanced applications of analog-age precedents," the petition said. Reported in: *PC World*, November 10; *arstechnica.com*, November 9.

It looked like the ten-year copyright clash between Google and the Authors Guild was finished when a unanimous appeals court ruled in October that the tech giant's scanning of 20 million books was fair use. But the Authors Guild has now asked the Supreme Court to reconsider the appeals court ruling, which affirmed the book scanning was "transformative" and praised Google's contribution to research and data mining.

The Guild, which represents various writers who are unhappy with the book scanning, filed the appeal December 31. The Guild doesn't want to shut down the scanning, but instead wants Google to pay copyright fees. At stake, the Guild claims, is the right of authors to determine what becomes of their works in the digital age.

In a press release the Guild argued that this is an important case for Supreme Court review because there are circuit splits in several areas of fair use law and others need clarification. The Supreme Court has not heard a fair use case in over twenty years, and the fair use law has transformed greatly in that time.

"Google copied books illegally—without permission, and because it could. It was inconvenient for it to seek permission, so it's that simple," said Mary Rasenberger, executive director of the Authors Guild and a copyright attorney.

"Its actions cannot be justified after the fact just because Google Books uses the books to provide a research service in addition to the many other uses it has made for profit."

"Even so," she added, "we're not asking for Google Books to be shut down. All we're asking is for authors to be compensated, if they wish, for the value their works bring to Google. We want to make that very clear.

"Our members are some of the biggest users of Google Books.

"It is crucial to set proper boundaries for fair use," Rasenberger continued. "If the Second Circuit's expansive view of fair use is not checked, the exception will swallow the rule in no time. We have become spoiled by the riches of a well-functioning copyright system, and so we take it for granted. Let's not now create a society that favors only sponsored or independently wealthy writers."

The decade-long copyright infringement case challenged Google for its mass digitization of millions of books, which it used, among other things, to create a search engine "Google Books." The Guild has argued that Google's scanning and mass copying project was not fair because Google simply sought to profit from use of authors' books, using the books



to enrich its search capabilities and competitive edge, and ultimately its corporate value.

Like any corporate use that merely reproduces entire works without any new copyright creation, Google should have sought permission first, the Guild contends.

A Guild victory appears unlikely given that the October ruling by the Second Circuit Court of Appeals was unanimous, and affirmed a famous earlier Supreme Court case about fair use. The top court, which accepts less than 1 percent of all appeals, may also refuse to hear the case.

On February 1, bestselling authors, book publishers, rights organizations, and copyright experts from around the world filed briefs with the Supreme Court supporting the Authors Guild's petition.

Authors and dramatists adding their names to the *amicus* brief filed include Stephen Sondheim, Margaret Atwood, Tony Kushner, J. M. Coetzee, Malcolm Gladwell, Douglas Wright, Michael Frayn, Marsha Norman, and Yann Martel. Major publishers Elsevier and Hachette were among those filing a separate brief, while other briefs came from the Copyright Alliance and the Copyright Clearance Center, among others.

"The court of appeals subordinated the very right that lies at the heart of copyright—the right to reproduce," said the publishers' brief.

The brief submitted by a group of international authors' and publishers' organizations directly questioned the lower-court ruling at the heart of the Guild's petition to the Supreme Court, stating that it "made no effort to engage in any 'case-by-case' analysis of the vast spectrum of books that Google copied cover-to-cover, nor even to categorize the different types of works involved, in order to assess the differential impact of the copying

on different categories of authors and publishers."

The brief filed by publishers posed a question fundamental to the Guild's petition: "If Google can copy every book in our great libraries, so may others, eliminating the 'exclusive right' at the heart of the incentives to create afforded by the Framers and Congress."

Joining the Copyright Clearance Center in its brief were the International Federation of Reproduction Rights Organisations, based in Brussels, and Marybeth Peters. As US Register of Copyright from 1994 through 2010, Peters helped shape copyright law—and in the process educated courts, the Congress, and the American public on its role. The copyright group's brief contends that "Google built its database by systematically copying millions of copyrighted books in their entirety." Reported in: *fortune.com*, December 31; *authorsguild.org*, December 31, February 2.

## SCHOOLS Lynnville, Tennessee

A US district court judge in Tennessee ruled in late December that a Lynnville student had a constitutionally protected right to wear a pro-LGBT-rights shirt bearing the message "Some People Are Gay, Get Over It"—which her principal had difficulty getting over.

The case, *Young v. Giles County Board of Education*, was made substantially easier by the school board's decision not to bother putting up a defense, which made Judge Kevin H. Sharp's ruling a foregone conclusion. Still, portions of Sharp's opinion are worth noting for their future application in other student-speech cases.

First and most importantly, a school cannot manufacture its own "disruption" by overreacting to speech. The

Supreme Court's *Tinker* standard says that substantially disruptive speech can be banned or punished. But the judge noted that the only "disruption" was caused by the principal's own decision to humiliate Richland High School senior Rebecca Young by reprimanding her in front of a crowded school cafeteria. (The school told Rebecca's parents, by way of a disturbingly ungrammatical letter, that the shirt was proscribed to protect Rebecca from being bullied. They just didn't say that the bullying would be by the principal.)

Second, a public school can never restrict discussion of only one side of a contested issue. The judge wrote that both Principal Micah Landers and his boss, Phillip J. Wright, justified the ban on the grounds that references to LGBT rights are "sexual." But by selectively enforcing the school's prohibition on sexual messages only against gay-rights advocacy, the school crossed the constitutional line of "viewpoint discrimination."

Rebecca Young's case is reminiscent of a recent controversy in Chesnee, South Carolina, over a student's insistence on wearing a T-shirt—"Nobody knows I'm a lesbian"—that her school attempted to ban as disruptive. In both instances, it appears that students collectively shrugged at the message while school authority figures freaked out. In the South Carolina case, the school backedpedaled and rescinded the ban after acknowledging that the shirt did not in fact provoke any disruptive student reactions—only adult ones.

Just as the consensus now seems established that Confederate flag apparel can be excluded from school in anticipation of disruption, there is growing agreement that LGBT rights are fair game for debate even on school grounds during school time:



In 2008, a Florida judge struck down a Pensacola-area school's ban on logos including rainbows, pink triangles and the words "gay pride" or "GP," which students began wearing in defense of a classmate bullied for being a lesbian. In Ohio, a school district capitulated in the face of likely defeat in a First Amendment lawsuit and allowed a Waynesville high-schooler to continue wearing his "Jesus Is Not A Homophobe" T-shirt, which the district had characterized as "indecent and inappropriate in a school setting."

A Naperville, Illinois, student won the right to wear a T-shirt with the slogan "Be happy, not gay," over objections that the shirt would disrupt school activities by provoking bullying. In a contrary view that appears based on the especially harsh language of the shirt, however, a federal appeals court sided with a California high school that banned a T-shirt reading, "I WILL NOT ACCEPT WHAT GOD HAS CONDEMNED . . . HOMOSEXUALITY IS SHAMEFUL," which the judges classified as a "verbal assault" intruding on the rights of LGBT students to feel safe. Reported in: [splc.org](http://splc.org), December 31.

## COLLEGES AND UNIVERSITIES Fairfax, Virginia

A federal district court has struck down a student conduct policy that allows a Virginia university to punish students for speech that causes distress or emotional discomfort.

The US District Court for the Eastern District of Virginia ruled against a George Mason University speech code, arguing the policy was overbroad and would allow the university to punish students for speech that is offensive or disagreeable.

Under student conduct policy 2013.9.B, which has now been

changed, the university identified a true threat, in part, as communicating "in a manner likely to cause causes [*sic*] injury, distress, or emotional or physical discomfort."

A former George Mason student filed a lawsuit after he was expelled from the university in December 2014 for violating two student conduct regulations. In particular, the university found the unnamed former student to be in violation of policies relating to threats and sexual misconduct.

The suit claims the university deprived "John Doe" of his rights without due process and violated his free speech rights. In the opinion, authored by US District Court Judge T.S. Ellis III, the court granted summary judgment to the student in both claims.

School officials found John Doe violated a student policy against threats when he sent a text message to his former girlfriend saying he would buy a gun and shoot himself in the chest if she did not respond, according to the opinion.

Ellis wrote that although the first part of policy 2013.9 prohibits true threats—which are not protected by the First Amendment—the second part of the policy could block speech that is merely disagreeable or offensive, and thus constitutionally protected. That part of the policy does not include a "reasonable person" limitation—meaning a reasonable person must find the speech threatening—and uses vague terms such as "distress" and emotional discomfort to describe speech that could be prohibited.

Ellis wrote that the school's policy is so broad that it would allow the university to punish a student for racist comments found offensive by another student. Brent Ericson, an assistant dean of students and director of the Office of Student Conduct, had

said in a deposition that a student who says that African Americans should not be allowed to enroll at the university could be punished under the code if an African American student is distressed by the comments.

"Yet, it is well established that racist speech, even on a university campus, is constitutionally protected," Ellis wrote.

Ellis cited the US Court of Appeals for the Fourth Circuit case *Iota XI Chapter Of Sigma Chi Fraternity v. George Mason University*, in which the appeals court ruled that while a university has an interest in providing "an educational environment free of discrimination and racism," they should do so without silencing viewpoint-based speech.

In the landmark 1969 US Supreme Court case *Tinker v. Des Moines Independent Community School District*, the Court ruled that student speech must "materially and substantially interfere" with a school's educational operation if it is to be censored. George Mason's defense argued that the student conduct policy was justified under the *Tinker* standard.

But the *Tinker* case applied to K-12 schools and Ellis wrote that there are "many differences" between colleges and public secondary schools and elementary schools.

"In short, controversial and sometimes offensive ideas and viewpoints are central to the educational mission of universities," Ellis wrote, summarizing the Fourth Circuit case *Kim v. Coppin State College*. "It follows that university students cannot thrive without a certain thickness of skin that allows them to engage with expressions that might cause 'distress' or 'discomfort,' which is precisely the type of speech that Code 2013.9B seeks to suppress."

The opinion said that a similar policy was already deemed unconstitutional in *McCauley v. University of the*



*Virgin Islands*, a case decided by the Court of Appeals for the Third Circuit in 2010. In the case, the Third Circuit found the university's speech code, which restricts speech that may "frighten, demean, degrade, or disgrace," was overbroad and covered much more speech than necessary to cause a threat.

Similar to University of the Virgin Islands' policy, George Mason's policy uses subjective terms and covers all speech, Ellis wrote—something that would cause students to speak less for fear of violating the policy. The plaintiff's text message, Ellis wrote, was not classified as a true threat because it did not aim to harm somebody else or to cause a panic.

School administrators also argued the threat of suicide required the university to take action due to its responsibility to the safety and well-being of students. However, the judge found that the discipline was based on the distress caused to the recipient of the message, not on Doe's intent to harm himself.

The judge directed the university and John Doe to find a "proper remedy" to resolve the case. Reported in: splc.org, March 4.

## SURVEILLANCE Washington, DC

A federal judge has ordered an immediate halt to the National Security Agency's controversial phone records collection program, ruling that the program violates the Constitution.

US District Court for Washington, DC, Judge Richard Leon's decision to end the collection was a victory for the plaintiffs in the case and for civil liberties groups who have been asserting that the program was unconstitutional since it was first exposed by Edward Snowden in 2013. But while the ruling is important in principle for what it says about the legality

of the program, its practical significance is minimal since it only applies to the two plaintiffs who brought suit against the NSA—Larry Klayman, a conservative legal activist, and his business.

Even that victory is minor since the NSA's collection program was already set to end on November 29. The ruling is significant anyway, however, because it's so rare that a judge ever enjoins the NSA from spying. This decision could set a precedent for other cases, according to David Greene with the Electronic Frontier Foundation.

"In effect, it only requires them to stop doing very little of what they do," says Greene, senior staff attorney and civil liberties director for the Electronic Frontier Foundation. "But the opinion is very broad-reaching. And because the NSA makes many of the same arguments to justify all of its mass spying programs, it's really significant when a judge rejects them."

Last May, different judges with the Second Circuit Court ruled that the program is illegal. Following that ruling, lawmakers passed a bill to halt the collection program, but they gave the NSA a 180-day grace period to replace it with a new system. Under that new system, phone companies will retain customer call records instead. The government will still be able to access the records by obtaining a court order from the Foreign Intelligence Surveillance Act any time it wishes to view them, but this would limit access only to records that are relevant to a national security investigation.

The NSA's phone records collection program began around May 2006 and allowed the spy agency to collect millions of phone records for customers of Verizon and other US phone companies. It's not known exactly how many records the spy agency has collected in the nine years it has been

operating, but the records include numbers dialed and received, as well as the date, time, and duration of the calls. Reported in: wired.com, November 9.

## PROFESSIONAL SPEECH Tallahassee, Florida

On December 14, a three-judge panel of the US Court of Appeals for the Eleventh Circuit panel handed down a third opinion in *Wollschlaeger v. Governor*, the Florida "Docs vs. Glocks" case challenging a Florida law that limits doctors' conversations with patients about guns. The first opinion in the case held that the law wasn't really a speech restriction, because it just regulated the practice of medicine. The second opinion, issued after a petition for rehearing, changed course and held that the law was a speech restriction, but that—as a restriction on professional-client speech—it had to be judged under "intermediate scrutiny," which it passed.

Then the panel asked for further briefing in light of *Reed v. Town of Gilbert*, a 2015 Supreme Court decision that had to do with content-based sign restrictions, but that the panel thought might be relevant to content-based restrictions on professional-client speech. The court concluded that, after *Reed*, such restrictions might be subject to strict scrutiny. But it didn't decide whether that was so, or whether a more pro-government standard of review should be applied, because the panel concluded by a 2-1 vote that the Florida doctor speech restriction passed even strict scrutiny, usually a difficult standard to satisfy.

Strict scrutiny is the standard for evaluating content-based speech restrictions generally, and not just doctor-patient or professional-client speech restrictions. The decision risks



undermining free speech rights more broadly. In fact, much of the argument that the Eleventh Circuit panel accepted is structurally very similar to arguments used for restrictions on “hate speech,” campus speech codes and the like.

The statute provides that a doctor may not ask questions (in writing or orally) “concerning the ownership [or home possession] of a firearm or ammunition by the patient or by a family member,” unless the doctor “in good faith believes that this information is relevant to the patient’s medical care or safety, or the safety of others.” And, according to the panel majority, “relevant” here means relevant based on “some particularized information about the individual patient, for example, that the patient is suicidal or has violent tendencies.”

A doctor thus may not ask all patients, or all patients with children, whether they own guns, whether on an intake questionnaire or in person, even if the doctor believes that this information would indeed be useful in giving general advice about safe gun storage, the supposed dangers of any gun ownership, and the like.

It also bans doctors from “intentionally enter[ing] any disclosed information concerning firearm ownership into the patient’s medical record if the practitioner knows that such information is not relevant to the patient’s medical care or safety, or the safety of others,” with the same interpretation of “relevant.”

Third, it provides that patients may “decline to answer or provide any information regarding ownership [or home possession] of a firearm,” though such a refusal “does not alter existing law regarding a physician’s authorization to choose his or her patients.” Nonetheless, it provides that doctors “may not discriminate against a patient based solely upon

the patient’s exercise of the constitutional right to own and possess firearms or ammunition.” This suggests that doctors may turn away patients for refusing to answer questions about guns (so long as they are “relevant” based on “some particularized information about the individual patient”), but may not turn away patients for answering the questions with “yes, I own a gun.”

Finally, the statute bans doctors “from unnecessarily harassing a patient about firearm ownership during an examination.” This means, according to the panel majority, that a doctor “should not disparage firearm-owning patients, and should not persist in attempting to speak to the patient about firearm ownership when the subject is not relevant [based on the particularized circumstances of the patient’s case, such as the patient’s being suicidal] to medical care or safety.”

These are content-based restrictions on what a speaker can say, and the Eleventh Circuit evaluated them under “strict scrutiny”—a deliberately demanding standard in free speech case law, which is only very rarely satisfied, and which requires that the government show that the law is “narrowly tailored” to a “compelling government interest.”

The first compelling government interest on which the panel majority relied is “protect[ing] the right to keep and bear arms” that is secured by the Second Amendment. But a doctor’s questioning, however annoying, can’t actually deny anyone the Second Amendment right to keep and bear arms. The Second Amendment, like almost all constitutional rights, only protects people from government intrusion. That’s why, for instance, an employer’s firing an employee for owning a gun at home isn’t a Second Amendment violation; indeed, most

state statutes (including Florida’s statutes) don’t even ban such firing.

But even if one views the Second Amendment discussion as shorthand for an asserted interest in protecting people’s gun possession against (some) private restrictions, here no doctor’s speech has any power to take away any guns. Even if the doctor’s speech is mistaken “harassing,” or not sufficiently “relevant,” no amount of a doctor’s speech will cause a patient’s gun to disappear.

The panel majority concluded that the government protects the right to keep and bear arms by “protecting patients from irrelevant questioning about guns that could dissuade them from exercising their constitutionally guaranteed rights, questions that a patient may feel they cannot refuse to answer, given the significant imbalance of power between patient and doctor behind the closed doors of the examination room.”

But why is there a compelling government interest in preventing speech on the grounds that it can dissuade people “from exercising their constitutionally guaranteed rights”? Persuasion and dissuasion are usually seen as constitutionally protected advocacy, and not things that the government has a compelling interest in stopping. Moreover, the statute is not at all limited to attempted dissuasion using factually inaccurate arguments; it applies to speech without regard to its factual accuracy.

Because the panel majority applied the general First Amendment test, its reasoning would set a precedent for many other restrictions. Indeed, the opinion would validate many arguments already urged to restrict “hate speech,” justify campus speech codes and the like. Free speech being trumped by the supposed need to protect other constitutional rights is precisely the argument given for



restrictions on supposedly bigoted speech, on the theory that bigoted speech undermines the Fourteenth Amendment right to equal protection.

Of course, as critics of such restrictions point out, bigoted speech isn't really government action denying equal protection; at most, it can help persuade people to have bad opinions. There really is no constitutional conflict. But the *Wollschlaeger* panel seems perfectly willing to see First Amendment rights trumped, in the absence of any real constitutional conflict, to protect Second Amendment rights against mere private "dissuading."

"We must . . . place the doctors' right to question their patients on the scales against the State's compelling interest in fully effecting the guarantees of the Second Amendment," wrote the panel majority. We must place students' right to express racist, religiously biased, sexist, anti-gay, etc. views against the State's compelling interest in fully effecting the guarantees of the Equal Protection Clause, say those who want to ban "hate speech."

The panel also focused on the "imbalance of power" between doctor and patient. Black or gay or Muslim students, supporters of campus speech codes argue, lack power compared to the white or heterosexual or Christian majority; therefore, the speech of the powerful should be restricted to protect the powerless.

The panel majority's argument that the patient is the doctor's "captive audience" may have similarly dangerous implications. Once it's accepted that it's permissible to restrict speech about guns when the audience is "captive," exactly that argument would be used—because it often has been used—to support campus speech codes and similar restrictions.

The panel majority also reasoned that the Florida law is backed by a compelling interest in protecting "the

privacy of gun owners' status as such from inclusion in their medical records." But the legislature didn't just enact a narrow law banning doctors from recording gun owners' status. Instead, it also limited doctors' conversations with patients even if the results are never entered into records.

And beyond this, Florida law allows doctors to ask all sorts of private questions, including questions about the exercise of constitutional rights: "Are you sexually active?" "Are you using contraceptives?" "What kinds of contraceptives are you using?" "Do you want to have children at some point?" "Have you ever been pregnant?" "How many sexual partners have you had in the past year?" "Are you engaging in anal sex?" "How much television do your children watch?" "Do your children play violent video games?" Some doctors likely do ask some such questions, on a relatively blanket basis. The questions are at least as intrusive as questions about guns; indeed, many people find some such information more private than gun ownership.

Yet the legislature didn't seem to take the view that Floridians need to be protected against those supposed "intrusions on privacy." The normal ways of dealing with intrusive questions—such as saying "I'd rather not talk about this with you," something people can say even to doctors—seem to be quite sufficient when it comes to private information such as this. Why aren't they sufficient when it comes to guns?

This selective targeting of questions about guns—when other, likely quite common, questions about private matters aren't restricted—suggests that this law isn't really about protecting privacy as such. Rather, it's about preventing doctors from spreading what many gun rights supporters see as unsound anti-gun propaganda.

But this can't be a permissible basis for the government restricting doctors' speech unless the speech is itself so unreasonable and harmful as to constitute malpractice, something to which this law is not at all limited. Reported in: *Washington Post*, December 16.

## TEXTING

### San Francisco, California

A San Francisco Superior Court judge has ruled that police officers who sent racist and homophobic text messages can't be fired because the city missed a deadline.

Judge Ernest Goldsmith said that California's Peace Officer Bill of Rights bars San Francisco from taking action against the officers after a one-year statute of limitations. "It is not in the public interest to let police misconduct charges languish," he said. "The public has a right to have accusations against police officers be promptly adjudicated."

The messages came out in court documents as part of a federal corruption investigation in February 2014. However, lawyers for the accused police officers say the San Francisco Police Department first learned about the texts in December 2012. But it wasn't until April 2015 that Police Chief Greg Suhr moved to fire eight of the officers and discipline the other six.

An attorney for the city said that police officials couldn't act on the messages without jeopardizing the corruption case against former officer Ian Furfinger, who was sentenced in February to almost four years in prison. Furfinger was found to have taken cash during searches of drug dealers' homes.

The judge disagreed, saying the text messages weren't related to the facts of the Furfinger case and that the city could have begun a probe



after Furringer was indicted in February 2014.

The messages included remarks calling African Americans “monkeys” and talk about killing “half-breeds.” Other messages said “we celebrate whiteness” and suggested African American women “should be spayed.”

Police Chief Suhr said he’ll appeal Goldsmith’s ruling.

“We’re confident in our position that we acted in a timely fashion and that the criminal case appropriately took precedence,” Suhr said. “Anybody capable of the reprehensive texts that these guys sent should not be police officers, and we will work for that to be the case.”

The fourteen officers were originally suspended without pay, but Goldsmith ruled in May that they must be put on paid leave. Three of the eight officers the city wants to fire have resigned, although one of them, Michael Celis, is seeking to return to duty after learning about the statute of limitations issue.

“The public has a right to have police officers not express themselves in this way and not think in this way—no one is saying differently,” said Tony Brass, a lawyer representing Celis. “The important thing is that these officers only texted that kind of material because that’s what their sergeant wanted. . . . That was his code to be in a club that officers had to be in if they were going to be successful.”

“The fact that San Francisco is forced to retain police officers that demonstrated explicit racism will have ramifications for the reputation of the department, the fair administration of justice, and the trust of the community SFPD serves,” said District

Attorney George Gascón. Reported in: [arstechnica.com](http://arstechnica.com), December 22.

## TRADEMARK Washington, DC

The US Court of Appeals for the Federal Circuit ruled December 22 that the Lanham Act, which was invoked to deny Asian-American music group The Slants a registered trademark, violates the First Amendment by conditioning government benefits on the viewpoint of a trademark seeker.

As the court stated, “It is a bedrock principle underlying the First Amendment that the government may not penalize private speech merely because it disapproves of the message it conveys.” Indeed—it should be up to the public, not the government, to drive bad ideas from the marketplace.

The Slants specialize in “Chinatown dance pop” and have released albums entitled “Slanted Eyes, Slanted Hearts” and “The Yellow Album.” Simon Shiao Tam, The Slants’ founder and bassist, has explained that the band selected its name in order to “take on these stereotypes that people have about us, like the slanted eyes, and own them.”

The Slants applied to register their name as a trademark to get the considerable legal and financial benefits that registration provides. The government denied them a trademark based on the Lanham Act, a law that allows the US Patent and Trademark Office (PTO) to deny registration to trademarks that it determines to be “disparag[ing],” or otherwise “offensive” or “immoral” to a “substantial composite” of an affected group. The Slants appealed that decision to the US Court of Appeals for the Federal Circuit, and the ALCU filed

an *amicus* brief saying that the band has every right to register its name.

The government’s stance in the appeal was that trademark registration is government speech, and as a result, the First Amendment doesn’t apply (it only protects private expression from government interference).

The government’s position rests on the Supreme Court’s recent ruling in *Walker v. Sons of Confederate Veterans*. In that case, the court held that Texas’s specialty license plate program, which allowed private groups to submit and fund license plate designs, was “government speech” and thus the state could deny plate designs.

The Supreme Court’s narrow decision was based on the fact that license plates have traditionally been used by states to transmit their own messages. For example, Texas issues specialty plates that say “Keep Texas Beautiful” and “Read to Succeed.” Furthermore, license plates are often closely associated with the state, namely because they always carry a state’s name. And, like dollar bills and IDs, the state actually prints and issues license plates.

But those things are not true in the case of trademark registration. The government has not traditionally spoken through registered trademarks, and the public does not generally attribute trademarks to the government. While it is true that the government maintains some control over registering trademarks, it can’t be right that by making a list of private speech, the government suddenly gets to claim the speech as its own and thus deny constitutional rights to private speakers. Reported in: [aclu.org](http://aclu.org), October 2, December 22.



# NEWS IS IT LEGAL?

## STUDENT PRESS Lawrence, Kansas

The current and former editors-in-chief of the *University Daily Kansan* have sued two top University of Kansas administrators for reducing the student newspaper's funding on the basis of content.

In the lawsuit, filed February 5 in the US District Court for the District of Kansas, Vicky Diaz-Camacho, editor-in-chief of the *Kansan*, and Katie Kutsko, former editor-in-chief, are alleging that a \$45,000 annual reduction of student fees for the newspaper was in retaliation for an editorial criticizing the Student Senate. They are suing Chancellor Bernadette Gray-Little and Vice Provost for Student Affairs Tammara Durham, who is also an ex-officio member of the University of Kansas Student Senate.

In May 2014, the *Kansan* published a "strongly-worded" editorial calling for reforms of the Student Senate election process after the student body president and vice president were elected despite receiving fewer votes than their competitors, who were declared ineligible the night before the election because of an election-code campaign violation. Later that summer, the student body president and vice president were removed from office and then reelected and reinstated.

But in the next budget review of the *Kansan's* student fees, the lawsuit alleges, student senators questioned *Kansan* editors for "unflattering coverage of the Student Senate" and criticized them for publishing the editorial. After the *Kansan* editors requested to maintain their existing funding level of \$2 per student per semester, the Student Senate Fee Review Committee voted to cut funding to \$1 per student—a \$45,000 annual reduction.

The stated reason for the reduction was the *Kansan's* plan to reduce print publishing from four days a week to

two. But according to the lawsuit, committee members told the *Kansan* editors to "fix their content" and then ask for restored funding the following year.

The Student Senate Finance Committee later amended the funding reduction to \$1.50 per student, which *Kansan* editors supported as a compromise. But after the *Kansan* staffers left that meeting, in which one student senator cited a "steady decline" in the quality of the paper's editorial content, the committee tabled the final passage of the funding bill. Later, the committee again reduced the funding to \$1 per student and voted to send the bill to the full Student Senate.

The full Student Senate approved cutting the *Kansan's* funding in half to \$1 per student for the 2015–16 academic year. According to the lawsuit, no other student organization had its funding reduced.

After the vote, the Student Press Law Center sent a letter of concern to Gray-Little, the university's chancellor. SPLC Executive Director Frank LoMonte explained that cutting funding for content-based reasons was unconstitutional and asked her to stop the funding cut. Gray-Little declined to intervene and recommended the *Kansan* staff meet with Durham, who had to approve the student fees budget before it went to the chancellor's desk.

Durham said she would mediate a meeting between *Kansan* editors and the Student Senate members. At the meeting, the student body president said she would look into asking the Finance Committee to revisit the funding question. That never happened, and the student body president never followed up with the *Kansan* staff until after Gray-Little had approved the student fees budget—which included the funding cut.

According to the lawsuit, the \$45,000 reduction forced the *Kansan*

to eliminate thirteen paid student positions on both the editorial and advertising staffs and leave its news adviser position vacant.

"Not every other student newspaper in the Kansas state university system is compelled to go through an annual budget review that is recommended by an on-campus organization which is the subject of news stories and editorials," the lawsuit states. "In addition to its practical impact on the ability of the *Kansan* and its staff to effectively gather, report and distribute news, the budget cut carries a significant chilling effect because it ties the *Kansan's* receipt of adequate funding to the expressions of viewpoints which meet the approval of the Student Senate.

"As a result of the budget reduction, plaintiffs are chilled in their expression of First Amendment-protected speech, and are less likely than they would otherwise have been to express viewpoints critical of the Student Senate or to make independent editorial judgements about the newsworthiness of Student Senate events."

Also according to the lawsuit, just over a month ago, a member of the Fee Review Committee complained to the *Kansan* news editor about the paper's coverage of the Student Senate and said that the newspaper had "bit the hand that fed" it and the staff "got what you deserved."

The lawsuit charges that the Student Senate "has made it clear that negative coverage . . . will impact reinstatement of the *Kansan's* previous funding level in the upcoming annual fee review process."

Federal courts have ruled that it is unconstitutional for student governments or university administrators at public institutions to decrease funding in retaliation for editorial content decisions.



The plaintiffs are asking for a preliminary injunction against the administrators that prohibits them from enforcing the reduction of the *Kansas*'s student activity fee allocation. The plaintiffs are also asking for nominal damages and reasonable attorneys' fees and costs. Reported in: splc.org, February 5.

### NET NEUTRALITY Washington, DC

Reading the tea leaves from a court hearing is a dangerous endeavor. But standing out from a December 4 hearing over net neutrality regulations were comments from an influential judge who seemed to indicate more comfort with the Federal Communications Commission's legal defense of the rules.

The comments came from Judge David S. Tatel of the United States Court of Appeals for the District of Columbia Circuit during a hearing where the FCC was defending its net neutrality rules against opponents who want to overturn the broadband regulations that are aimed at preventing favoritism on the internet. Judge Tatel is part of a three-judge panel that will decide whether the rules are upheld or struck down.

The FCC is defending the rules against a lawsuit filed by telecom, cable and wireless trade groups. The FCC's classification of broadband as a "common carrier" service like phones is at the heart of the suit. Telecom and cable firms argue that broadband services are not the same as telephone services and should not be strapped with the same utility-style framework of heavy regulations. They say the FCC illegally put broadband into the same bucket as phone services and therefore that the net neutrality rules should be overturned. The agency has argued that it had to reclassify broadband as a utility-like service after the

court vacated rules last time and told the agency it was making rules on shaky legal ground.

Judge Tatel pointed several times to case history that supports the FCC's move to regulate broadband services like utilities. He said an opinion by the Supreme Court in 2005 gave the FCC the ability to categorize communications services as it sees fit. Judge Tatel also repeatedly went back to that high court decision in questions to cable and telecom companies suing the agency for overreach.

"Isn't that our starting point?" Judge Tatel said just minutes into a long morning of oral arguments. His comments were particularly scrutinized because twice before, in 2010 and 2014, he wrote opinions to vacate previous net neutrality rules.

The results of the case could reshape the way consumers access internet content. For more than a decade, the FCC has tried to create regulations to ban internet service providers from blocking certain websites or making some travel faster or slower than others. A decision is expected in the spring. If the FCC wins, telecom and cable firms may take the case to the Supreme Court.

In three hours of argument the judges also showed skepticism of several aspects of the FCC rules, including whether the agency had the authority to strap net neutrality rules onto wireless services and whether it was reasonable to ban "paid prioritization," where websites pay internet service providers for faster downloads.

Judge Stephen F. Williams compared priority delivery of content on the internet to the "entirely reasonable" practice of food companies paying trains for refrigerated cars.

Still, Gene Kimmelman, head of the public interest group Public Knowledge, which supports the rules, said the hearing was notable because

while he has "heard many arguments of the commission before the court where they've been ripped apart," this time "they were given sound support for using reclassification, which was the critical point." Reported in: *New York Times*, December 4.

### COPYRIGHT Charlotte, North Carolina

The founding editor of *Business Insider UK*, Jim Edwards, had a bank delete two of his tweets December 22. In an e-mail, Bank of America told Edwards that his tweets violated the bank's copyright and that if he kept it up, they'd see to it that his Twitter account was deleted.

"Investment banks apparently have the power to censor journalists on Twitter, simply by asking," Edwards wrote in a short post on *Business Insider* describing the situation. "That is depressing."

Edwards had quoted a research document produced by analysts. He says the tweets were "probably trivial," but can't really be more specific—in part because the frequent Twitter user can't even remember exactly what they were about.

One of them reads "BAML's Teo Lasarte is developing a pun-based method for analysing auto stocks," where the "BAML" acronym refers to Bank of America Merrill Lynch. The tweet included a screenshot that has been deleted.

Edwards acknowledges no earth-shattering information has been lost to the world. In fact, it was likely a compliment to the analyst in question. "Sometimes analysts write funny headlines on their investment notes," he says, leading him to take a screenshot and tweet it out.

B of A might have a case if Edwards had sent out the entire text of Lasarte's report, he says, but the funny headline tweet didn't even come



close to that. In Edwards' view, it's a no-brainer case of fair use.

The Digital Millennium Copyright Act claim came from the "Attributor Corporation," part of digital-rights company Digimarc, working on behalf of Bank of America. It's the latest example of the Kafka-esque system of copyright takedowns, in which intermediaries like Twitter tend to treat users subject to copyright claims as guilty until proven innocent.

"I have no idea what Twitter agreed to censor for BAML, and no way of guessing what BAML's objection was really about—or if it was even BAML who made the complaint," writes Edwards.

Twitter wouldn't comment on the matter other than to refer to their copyright policy. The Digimarc employee whose name is on the takedown notice didn't respond to Edwards' inquiry.

Other Edwards tweets that quote Bank of America reports remain

online, and unchallenged. He has appealed the claim through Twitter's system.

"I'm not in favor of journalists getting special treatment over this kind of thing," said Edwards. "But it is frustrating. Twitter/ BAML are sending me legal spam. I'm replying, basically just asking them to look at this and apply some discretion or judgment. So far, no dice." Reported in: arstechnica.com, December 22.



## LIBRARIES

### Wasilla, Alaska

The Wasilla Public Library will move its entire young adult nonfiction collection in response to a complaint about one young adult gay sex education book. A Wasilla parent, Vanessa Campbell, complained about *This Book Is Gay* in September after her ten-year-old son pulled the sexuality guide for LGBT young people guide off a shelf in the library's children's section.

*This Book Is Gay* is written in a casual and humorous—and sexually explicit—style, with cartoon drawings and nicknames for body parts along with anatomically correct ones.

Campbell's complaint triggered the formation of a three-person reconsideration committee that submitted its findings and recommendations to the library director and patrons December 1. Based on those findings, the library director decided to move more than three hundred young adult nonfiction titles now housed in the library's downstairs children's section upstairs to be "interfiled" with adult nonfiction by December 11, according to a press release issued by Wasilla Mayor Bert Cottle.

The city will also review the library's existing "reconsideration" process, in which patrons can flag books for additional review of their status in the library, according to the release.

Campbell, shocked by what she saw as vulgar language and graphic descriptions of sex in the book, started the unusual process of getting the book reconsidered by the library director because of its location.

Library director Kathy Martin-Albright decided it should stay where it was, so Campbell filed an appeal in October, triggering the formation of the reconsideration committee. The committee came to three conclusions in its findings: *This Book Is Gay* should stay on the shelves; the book should

be reclassified to a Dewey call number for sexual education; and it should be "in a place that teens can access and feel comfortable accessing," such as the young adult or adult sections.

"As a committee, we were impressed with the process and due diligence of the patron and the library director," the finding states. "Both should be commended for their passion to support libraries, books and the Wasilla community."

Asked about the decision to move the entire juvenile nonfiction section instead of one book, Cottle said it was the least complicated option. Reclassifying just one book could lead to questions about others, he said.

The city's new library under construction will house all nonfiction books in one area, officials have said.

Campbell said her concerns had only to do with the age-appropriateness of the material—not that it is by a gay author or meant for LGBT people—and said she is "very pleased" with the committee's decision.

"I appreciate the time and effort they put into this process," she said.

The reconsideration committee was made up of David Cheezem, owner of Fireside Books in Palmer, Friends of Wasilla Public Library representative Julie Ede and Wasilla High School librarian Shelly Logsdon. The trio said they wanted to make sure *This Book Is Gay* was accessible to those that need it and not placed in a restricted area—like behind the counter—or not easily found without staff help.

"The Committee understands the parental concern on this book being placed in the Juvenile section of the library and the accidental discovery that may be made by younger children," the decision states. "We also understand the subjective nature of age-appropriate content; and the herculean effort it would take for a librarian to segregate every controversial

book to everyone's liking; and the chilling effect it would have on free speech." Reported in: *Alaska Dispatch News*, December 1.

### Rosemount, Minnesota

A reconsideration review committee voted 7–4 December 3 against removing a book from Rosemount middle and high school libraries. Parents Ben and Kandi Lovin had requested the district remove Gayle Foreman's *Just One Day* from the libraries on the grounds it had material that was inappropriate for that audience. They raised the concerns after their eleven-year-old daughter brought the book home from her school library. They rejected an offer to have the book restricted from just their daughter.

"She can check out that book and have it in her hands all day before she talks to me, which is what happened," Kandi Lovin said. "You do have to watch what materials are out there. They're not all educational in the way we thought they were."

The book is about a recent high school graduate who travels Europe and has a brief affair with another traveler, as well as the path her life takes after that meeting. The Lovins pointed specifically to passages that contain sex, nudity, and drinking by the eighteen-year-old main character and foul language. They say those violate the district's policy for selecting instructional materials.

But secondary media specialist Dawn Lyons, who spoke in defense of the book, said it's not fair to consider those scenes in isolation from the rest of what she called a coming of age story. She pointed out that *Just One Day* was the 2014 winner of the Young Adult Library Services Association's award for best fiction for young adults and has been recommended for readers fourteen and up.



“Media specialists must consider the students and staff population we are serving,” Lyons said. “Our collection must include material for the most mature students as well as the younger students.”

Lyons said teens can see themselves in a work like *Just One Day* and might recognize someone dealing with some of the same issues they face in their life.

Rosemount High School senior Kennedy Rieck, a member of the reconsideration committee, supported that thought. She said she didn’t focus on the sex and drugs when she read the book but focused on the experiences the main character had.

“I see it as a learning experience,” she said. “I look at it as finding yourself and seeing yourself in a different way.”

Committee member Michelle Howe, a media specialist in the district, said she would let her eighth-grade daughter read the book.

About twenty-three people sat in the audience at the hearing, but audience members were not allowed to take part in the discussion.

Following roughly an hour of discussion, committee members chose among three options: keeping the book, removing it from middle school libraries or removing it from both middle and high schools. There were no votes to remove the book from high schools. Reported in: *Rosemount Town Pages*, December 3.

### Warrensburg, Missouri

A call to ban a book from the high school library shelf resulted in unanimous denial from the school board. A patron wanted to remove Juliet Marillier’s award-winning *Daughter of the Forest* from the library. The district investigated the complaint.

“For the first time in three years, we convened our Challenge

Committee,” district Superintendent Scott Patrick said.

“What was the concern?” board member Morris Collins asked.

A committee member who also serves on the school board, Rick Miller, said the story is about an industrious young lady who is working alone in a forest when approached by young men who rape her. The rape scene caused the complaint.

“Even though (the act of rape) was disgusting, it was not portrayed in a vulgar, nasty way,” Miller told board members. An online review of Marillier’s work showed the book has received accolades and is geared toward high schoolers, Miller said. The committee recommended and the board agreed the book will remain in the library. Reported in: *Daily Star Journal*, November 18.

### Darby, Montana

The Darby Community Public Library Board decided the March 9 presentation titled “Perspectives on Islam” in the Life-Long Learning Series should continue as scheduled after holding an emergency meeting February 24.

“I called for the meeting after receiving phone call complaints the previous evening and receiving written complaints yesterday morning concerning the library offering the educational event,” library director Wendy Campbell said. “The nature of the complaints were a signal to me that they should not go unchecked.”

The Life-Long Learning Series schedule was set months earlier. On February 23 the library received written complaints from seven community members.

Board members Forrest Hayes, Lisa Poe, Barbara Ackerman, Judy Estler, and Ted Almgren listened to ten community members voice their opinions

for open-mindedness and education and for stopping the presentation because of radical Islam.

The series speakers present earlier in the day at Darby High School then in the library at night.

Community member Rocky Lanier said he was opposed to bringing in the speaker.

“Basically this all started with Islam in the world and how it is actually at war with the United States even though we haven’t declared war on them,” Lanier said. “I’m former military. I’ve been overseas and I’ve seen how these people are. I’ve seen how they promote what they do in other countries.”

Lanier said the American Constitution and the right to be peaceful, loving, and pursue our dreams will not work for Islam. “You can’t do that in Islamic countries,” Lanier said. “So, to have someone come here and tell us they are just here to be peaceful. No they won’t. Once they come over they’ll take over. Their goal is to kill everyone who is not Muslim.”

Darby school representatives Superintendent Loyd Rennaker, Principal J. P. McCrossin and teacher Steve Gideon said the students have to have parent signatures “opting in” to hear the presentations.

Darby Mayor J. C. McDowell said adults have the right to decide whether to attend. “If the topic is not of interest to the community members of Darby there will be an empty room at the presentation,” McDowell said. “I enjoy the right to choose.”

The funding for the series costs the library \$50 and the presenters are from Humanities Montana with guidance from Tamarack—an alliance of libraries in western Montana.

“Whether I agreed with what they said or not the question is, ‘What do



we do to serve the public?” board member Almgren said.

“It is to inform them of things they don’t know about,” board member Ackerman said. “That is the mission of the library. As an American I believe in freedom of speech and to let people decide. If they don’t want to come that is up to them.”

“A public library is a place of education not to promote or condemn,” Campbell said. Reported in: *Ravalli Republic*, February 25.

## SCHOOLS Roxbury Township, New Jersey

The Roxbury public school district will not remove what it has called a “supplemental” history text book which two or three parents say glorifies Islamic Jihad. The book, *History Alive: Medieval World and Beyond*, is used at the Eisenhower Middle School by seventh and eighth graders as a supplemental text.

At a December board meeting, Assistant Superintendent of Schools Loretta Radulic read a prepared statement detailing the district’s decision on the matter, after a few parents questioned the book’s place in the classroom of seventh and eighth graders.

Resident Laurel Whitney maintained, for example, that the book glorifies “suicide and violence” in its discussion of Islam. Whitney was present at the meeting, and had previously brought her concerns to the board’s attention. She also maintained that the statement read by Radulic didn’t adequately address her concerns about what she perceives as glorification of suicide and violence.

“The Roxbury Board of Education and administration is committed to providing the students with a quality education. At the same time, your Board of Education is committed

to providing the community with an opportunity to be heard on issues,” Radulic said.

“Recently, a few parents expressed concerns regarding the use of a supplemental textbook entitled *History Alive*. Many misconceptions regarding the text have generated questions that we would like to address directly,” Radulic said.

“We believe that it is important to clarify these misconceptions so that our community has accurate information. First, the text was chosen by our educational professionals as a supplemental resource to be utilized on a limited basis with our students.

“None of the students are provided with a copy of this textbook because it is not the primary text used in class. Therefore, some of the objections raised by members of the community contain parts of the text that students do not have access to,” she said.

“It is merely a supplement from which our teachers choose various activities that are educationally appropriate for our students as they explore world cultures. Second, the history curriculum for seventh and eighth graders follows a historical timeline. During seventh grade, the students focus on early civilization, including Judaism and Christianity. The eighth grade curriculum covers the Middle Ages during which Islam is reviewed,” Radulic said.

“Therefore, looking at the *History Alive* supplemental text in isolation, without considering the history taught previously, may give the mistaken impression that the entire curriculum is focused on Islam. It is not. Third, our staff regularly reviews texts for yearly approval by the Board of Education. Any concerns raised by parents and/or community members are taken into consideration when the curriculum is reviewed.

“We will continue to follow our established practices and procedures when reviewing our curriculum and will certainly consider community members concerns regarding this supplemental text as we move through the curriculum review process for the upcoming year,” she said.

“We hope our clarification regarding this text allays any concerns community members may have, as we move forward together to ensure that Roxbury students are provided with a quality education.”

Muslims and scholars do not even agree on what the word “jihad” means, according to online published reports.

The K-12 district currently enrolls about 3,900 students in grades PreK through 12. The district contains seven school buildings, including five elementary schools, the Eisenhower Middle School and Roxbury High School. Reported in: *Roxbury Register*, December 8.

## Rumson, New Jersey

Two books that a group of parents say contain sexual passages and explicit language that are inappropriate for their Rumson-Fair Haven Regional High School students will remain on the district’s reading lists.

Rumson-Fair Haven school board members, however, agreed to formalize and better publicize the procedure for students to request alternative reading options.

The school board heard a report from an ad hoc committee of teachers, school board members and a parent, which determined the novel *Cal* and the play *Death and the Maiden* were age appropriate for the district’s juniors and seniors. The committee was formed after a group of more than three hundred parents expressed concerns about the books last month.



That decision centered in part on a review of the school district's health curriculum, which provides sexual education sections during freshman year, a more comprehensive sections in junior year and refresher discussions in senior year, said Sarah Maris, a member of both the school board and the ad hoc committee.

Maris said the passages were not designed to be gratuitous, but rather were used in either historical context or as tool to show a literary theme in the book.

*Death and the Maiden* is about Paulina, a former political prisoner who was raped by her captors, and years later believes she found her attacker and puts him on informal trial. *Cal* is about a young Irish Catholic man involved in the Irish Republican Army who falls in love with the wife of a man murdered in an incident in which Cal was a getaway driver.

"When students read these very brief sex scenes, they should not be surprised, because this is material that they have read about and talk about a year ahead of time," she said.

The ad hoc committee also recommended that *Death and the Maiden* be moved off the summer reading list and instead be taught during the school year so teachers can guide the students as they read the play, Maris said.

The committee also tried, but could not accommodate a request from parents to give all students options on books to read that meet certain literary topics, Maris said. Doing so would not work because part of the in-class work is analyzing the texts, she said. To accomplish that with students reading multiple books, teachers would have to prepare multiple lessons, which ultimately would cut down on discussion time for each lesson.

"We, as a committee, pushed really hard on this. The reality is it is really

difficult to do that," she said. "We cannot have classrooms where kids get half of the English instruction."

The committee's review did little to assuage parents who said they felt it was stacked with people who were already proponents of the books and didn't take up their concerns fairly. Parents said the procedure to request an alternative book is too restrictive and ultimately singles out students. Several parents also returned to the same question: Aren't there better books for students to read?

At least one board member agreed that the district should consider more regularly changing required reading lists. *Cal* and *Death and the Maiden* have been on and off the district's reading lists for about fifteen years.

"Maybe we need a more frequent rotation," said Teresa Liccardi, who also noted that she was comfortable with the committee's recommendations about the two books and the thoroughness of their review.

Those books, school board members warned, would also likely cause concerns for some people. "The nature of good literature is conflict. Conflict is quite often controversial to one side or another," said Maris.

Several parents who attended the board meeting said they supported the board's efforts to review the books. Parent Katy Badt-Frissora of Fair Haven said she was initially outraged when she learned of the sexual references in *Death and the Maiden* and marched up to her son's room to talk about them.

Badt-Frissora said her perspective changed when her son, who normally does not talk about his school work, spent ten minutes explaining to her how the references represented the experiences during the dictatorship of Augusto Pinochet in Chile, how the book paralleled the ongoing conflict

in Syria and it fit into a broader discussion about revenge.

"Literally, this kid educated me in such a profound way," she said. "It's risqué, it was uncomfortable, but it worked." Reported in: *Asbury Park Press*, November 18.

### Marshfield, Wisconsin

A Muppets book about how children experience poverty around the world is on track to remain in Marshfield elementary schools, despite objections from a School Board member who has garnered national attention.

On December 9, an eight-member panel voted unanimously to recommend that the Marshfield School District continue using the book *For Every Child a Better World*, by Jim Henson, in kindergarten social studies curriculum.

District officials convened the panel after board member Mary Carney raised concerns that the book is too graphic—namely, that its illustrations of some children living in poverty and violence are not appropriate for kindergartners. Citing online reviews, Carney claimed some people said they were traumatized after reading the book.

But panel members disagreed.

"I think that a lot of times we want to protect these young kids from the reality of what's going on in the world around them," teacher Donna Smith said. "But the reality is, in our classrooms every year, we have more and more kids who are homeless, and more and more kids who are hungry, and more and more kids who are victims of abuse in their households."

Smith and other panelists—who included teachers, district staff and community members—said it is important to expose children to the world in a way they can understand, in part



to give them insight on how different people and societies live.

Teacher Judy Nicksic acknowledged some images in the book might be jarring, but she said teachers can use that reaction to cultivate learning in a sensitive way.

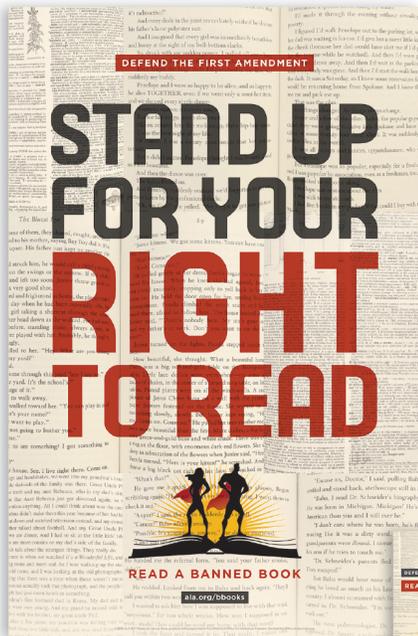
“Many children would be disturbed, as they should be,” Nicksic said. “But it’s the dialogue that follows it.”

One parent who sat on the panel, Marshfield resident Preston Tippen, said he read the book to his kindergarten-age son, and the

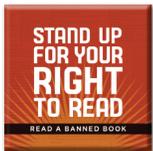
experience provoked discussion about child labor and education. Reported in: *Marshfield News-Herald*, December 9.

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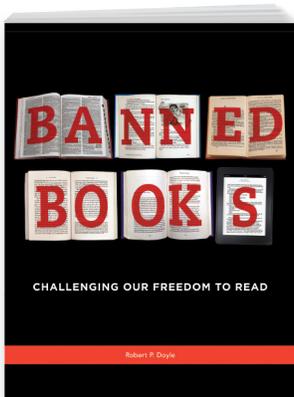


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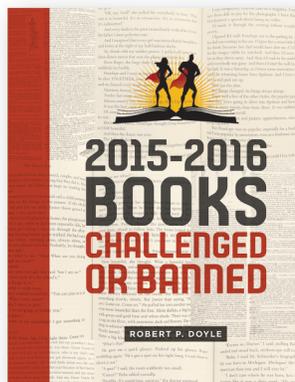


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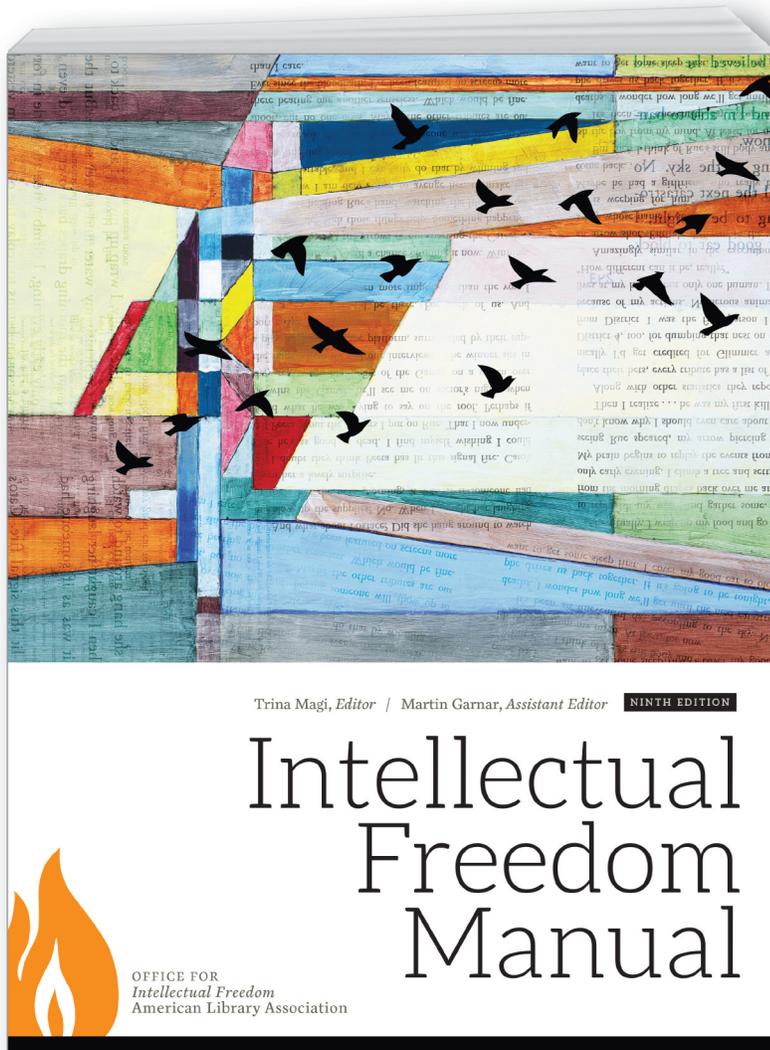
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**Trina Magi, Editor, and Martin Garnar, Assistant Editor, for Office for Intellectual Freedom (OIF)**

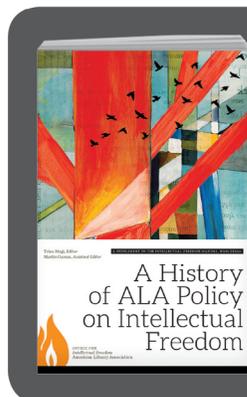
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